

United States
Circuit Court of Appeals
For the Ninth Circuit.

MISSION TRANSPORTATION AND REFINING COM-
PANY, a Corporation, Claimant of the Barkentine
"FULLERTON," etc.,

Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Appellee.

Apostles.

Upon Appeal from the United States District Court for the
Northern District of California, First Division.

FILED

APR 28 1913

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INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, in and
for the Northern District of California.*

No. 15,070.

SOUTHERN PACIFIC COMPANY, a Corporation,
Libelant,

vs.

Respondent.

Barkentine "FULLERTON," Her Tackle, Apparel and Furniture,
Respondent.

MISSION TRANSPORTATION AND REFINING COMPANY, a Corporation,
Claimant.

Statement of Clerk U. S. District Court.

PARTIES.

Libelant: Southern Pacific Company, a Corporation.

Cross-libelant: Mission Transportation and Refining Company, a corporation.

Respondent: Barkentine "Fullerton," her tackle, apparel and furniture. [1*]

Cross-respondent: Southern Pacific Company, a corporation.

Claimant: Mission Transportation and Refining Company, a corporation.

PROCTORS.

Libelant: J. E. Foulds, Esquire, assisted by L. T. Hengstler, Esquire, San Francisco, Cal.

Cross-libelant: Messrs. Page, McCutchen, Knight and Olney, and Ira A. Campbell, Esquire, San Francisco, Cal.

*Page-number appearing at foot of page of original certified Record.

Respondent: Messrs. Page, McCutchen, Knight and Olney, San Francisco, Cal.

Cross-respondent: J. E. Foulds, Esquire, assisted by L. T. Hengstler, Esquire, San Francisco, Cal.

Claimant: Messrs. Page, McCutchen, Knight and Olney, San Francisco, Cal.

1910.

August 25. Filed verified Libel for damages on account of collision in the sum of \$4,105.62, etc.

“ “ Issued Monition for the attachment of the barkentine “Fullerton,” and which said Monition was afterwards on the 31st day of August, 1910, returned and filed with [2] the following return of the United States Marshal endorsed thereon:

“In obedience to the within Monition, I attached the barkentine ‘Fullerton’ therein described, on the 26th day of August, 1910, and have given due notice to all persons claiming the same that this Court will, on the sixth day of September, 1910 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that

I posted a notice of attachment on said barkentine 'Fullerton' and handed a copy of this monition to O. Oleson, person in charge. I also placed a keeper thereon. Attachment made at the drydocks of the Union Iron Works, San Francisco Bay.

C. T. ELLIOTT,

United States Marshal.

Paul J. Arnerich,

Deputy.

San Francisco, Cal., August 26,

1910.

1910."

August 26. Filed claim of the Mission Transportation and Refining Company to the barkentine "Fullerton," etc.

" 26. Filed stipulation for the release of the barkentine "Fullerton," in the sum of \$5,000, with the Fidelity and Deposit Company of Maryland, as surety. [3]

December 30. Filed Answer of Mission Transportation and Refining Company, to Libel.

" 30. Filed Cross-Libel of the Mission Transportation and Refining Company.

" 31. Issued Citation for the appearance of the Southern Pacific Company, a corporation, to appear

1910.

and answer the Cross-Libel of the Mission Transportation and Refining Company, filed herein; and which said Citation was afterwards on the 5th day of January, 1911, returned and filed with the following return of the United States Marshal endorsed thereon:

“I have served this writ personally by copy on Southern Pacific Company, (a Corporation), the Cross-libellee herein named, by handing to and leaving with F. H. Reed, who is the person designated by the Defendant under the Statutes of the State of California upon whom all legal process shall be served in matters affecting the Southern Pacific Co. (a corp.) in the State of California, an attested copy of the annexed Citation in the City and County of San Francisco, in the State and Northern District of California, January 3, 1911.

Dated at San Francisco, California, this fourth day of January, A. D. 1911.

C. T. ELLIOTT,

U. S. Marshal.

By M. J. Fitzgerald,

Office Deputy Marshal.” [4]

1911.

January 17. Filed Answer of Southern Pacific Company to Cross-libel.

1913.

January 16. Filed Deposition of T. A. Grant, taken on behalf of claimant.

January 17. The above-entitled cause this day came on for hearing before the Honorable Frank S. Dietrich, Judge of the District Court of the United States for the Northern District of California, and after hearing was continued to January 20, 1913, when the cause was argued and submitted to the Court.

January 24. Filed Memorandum of Decision, dismissing the Libel and Cross-libel in this cause.

January 25. Filed Transcript of Testimony taken in open Court.

February 1. Filed Decree dismissing Cross-libel.

February 5. Filed Decree dismissing Libel.

February 10. Filed Mission Transportation and Refining Company's notice of appeal.

February 20. Filed Bond on Appeal.

March 10. Filed Assignment of Errors. [5]

In the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,070.

MISSION TRANSPORTATION AND REFINING COMPANY, a Corporation,

Cross-libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
tion,

Cross-respondent.

Praecipe [for Apostles].

To the Clerk of the Above-entitled Court:

You will please prepare the Apostles in this case to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, upon the appeal heretofore perfected in said court by cross-libelant, and include in said apostles, the following pleadings, proceedings and papers on file, to wit:

1. All those papers required by section 1 of paragraph 1 of Rule 4 of the Rules in Admiralty of the United States Circuit Court of Appeals.

2. All the pleadings in said cause, including the cross-libel, the claim and answer to said cross-libel, with all the exhibits annexed thereto.

3. All the testimony and other proofs adduced in the cause, including the testimony taken at the trial; all depositions taken by either party and admitted in evidence and all [6] exhibits introduced by either party and to be sent up as original exhibits.

4. The opinion and decision of the Court.
5. The final decree and notice of appeal.
6. The assignment of errors.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Cross-libelant and Appel-
lant herein.

[Endorsed]: Filed Feb. 20, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [7]

*In the District Court of the United States, Northern
District of California.*

IN ADMIRALTY.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Libelant,

vs.

Barkentine "FULLERTON," Her Tackle, Ap-
parel and Furniture,

Defendant.

Libel for Damages for Collision.

To the Honorable J. J. DE HAVEN, Judge of the
United States District Court, Northern District
of California, in Admiralty.

The libel of Southern Pacific Company, a corpora-
tion, against the barkentine "Fullerton" alleges:

I.

That libelant is a corporation created and existing
under laws of the State of Kentucky in the United
States of America, and engaged in the maintenance

and operation of railroads and appurtenances thereunto appertaining, in the State of California, under lease of same from the owners thereof for a period of ninety years from and including the first day of January, 1894.

That among said railroads and appurtenances are and at all the times herein mentioned were included all steamers used in, or in connection with their operation, across and over the bay of San Francisco, for the transportation of freight-cars, and that one of the steamers therein and so employed was, at all the times [8] hereinafter mentioned, and still is, the steamer "Transit," said steamer, together with the railroad to which same was and is appurtenant, being the property of the Central Pacific Railway Company, a corporation duly created and existing under the laws of the State of Utah, in the United States of America, and at all the times herein referred to was, as aforesaid, duly possessed, leased and operated by said libellant.

That pursuant to the terms of the lease of same this libellant was required to expend, and did expend, all moneys requisite for the repair of same by reason of any injury or damage thereto occurring during its possession thereof, and all of the moneys required for the repairs hereinafter set forth were advanced and paid by said libellant, and said libellant is the true and *bona fide* owner thereof and of all claims therefor, and no other person is the owner of same or any part thereof.

II.

That during all of the times hereinafter mentioned

said steamer was managed, controlled and operated by a skillful master, officers, seamen and employees, and plied regularly in such business as is hereinbefore mentioned across and over the bay of San Francisco, in the State of California, in the United States of America, between the city of Oakland and the city and county of San Francisco.

III.

That on or about the 13th day of December, 1909, at about 11 o'clock P. M. of said day, said steamer "Transit," in the command and under the direction of the master thereof, and subject to the services of its officers, seamen and employees, and in the operation of the business of libelant as hereinbefore set forth, commenced her regular trip from and at said city of Oakland to said city and county of San Francisco, to the terminus or point of landing of said steamer "Transit," at said city and county of San [9] Francisco, usually known as and called Mission Bay Slip, adjacent or near to the portion of said Bay of San Francisco, known as Mission Bay.

That during said trip of said steamer from the city of Oakland to said city and county of San Francisco she was interrupted by a heavy fog; that during her said course thereon she entirely proceeded under a slow bell, and careful and slow management, her helm being entirely under the hands and in control of her master, in the pilot-house thereof, he then and there and therein being assisted by the first officer of said steamer and one of its deck-hands, all windows of said pilot-house being then retained open and unenclosed, and the fog whistle of said steamer

being sounded continuously by such assistants, at intervals of from thirty to forty seconds, the engines and machinery of said steamer being then and there in charge of and operated by her chief and assistant engineers and their subordinate employees, under the directions of its said master.

That said master and his assistants, as aforesaid, in said pilot-house, made during said trip all efforts to discover any approaching vessel or danger therefrom, or the anchorage of any ship or vessel in or about its course or elsewhere, by careful inspection and discovery from said pilot-house of all vessels to which said steamer might be approaching, or which might approach it, or be visible to said master and assistants, and also of recognition of all bells or fog signals of any kind sounded by any vessel so anchored, or approaching, or being approached, or immediately or at all perceptible to them or either of them.

That in addition to the officers above mentioned and said master, and for like purposes of safety, there were also during said trip, upon the bow of said steamer "Transit," the second officer of same and four deck-hands thereof, whose attention was wholly [10] occupied in like attempts to ascertain the location of any and all vessels anchored, or proceeding, or approaching or being approached, and to detect the sounding at any time of any bell or fog signal from any such vessel.

That twenty-five minutes after leaving said Oakland, while upon her course to San Francisco, the master, officers and deck-hands of said steamer

“Transit” heard the fog bell located at said Mission Bay slip ringing, but up to said time had heard no bell or fog signal from any vessel, nor had seen any vessel anchored, approaching, or being approached by her, or otherwise visible; that three or five minutes later the lookouts last above mentioned reported a light upon the port bow of said steamer “Transit” and close aboard, when her helm was put hard-to-port, and a signal given to her engineers for full speed ahead, trying to sheer off from any vessel indicated by such light, but it was then too late to avoid collision with the barkentine “Fullerton” hereinafter described, upon which said light was exhibited, the bowsprit thereof being not more than two or three feet back from the forward pilot-house of the “Transit.” On discovery of this fact two bells were given by the master of the “Transit” to its engineer, to stop the engine, but the headway, little as it was, brought the “Transit” right about midship across the bow of the “Fullerton,” tearing off the top of the port paddle-box and bridge thereof of the “Transit,” the bowsprit of the former tearing down the funnel of the latter, and the cut-water and bobstays of the “Fullerton” damaging the guard and spring beam of the “Transit.” That in consequence of said damages and other damages resulting therefrom or connected therewith the sum of \$4,105.62, in lawful money of the United States of America, was actually expended by libellant herein at its own cost and expense, in the repair of said steamer “Transit.” [11]

IV.

That the barkentine "Fullerton" hereinbefore mentioned is a four-masted vessel, and at the time of the collision heretofore recited was anchored at a point near to the fairway of said steamer "Transit" required for her said passage from the city of Oakland to the city and county of San Francisco, and during said period was encompassed by a dense fog, but failed to sound any bell or other fog signal capable of being heard or recognized by the master, officers, seamen or employees of any vessel upon said passage, or in anywise approaching said "Fullerton," and that by reason of such failure the anchorage and position of said vessel was wholly unknown to or recognizable by the master, officers, seamen or employees of said steamer "Transit," or any of them, except as hereinbefore set forth, and then not until after its light had been seen by the latter under such conditions as to avoid the possibility of collision of said "Fullerton" with said steamer "Transit," and the damage and injury to said steamer "Transit," and the outlay therefor by libellant, as hereinbefore set forth.

V.

That at all the times hereinbefore mentioned said "Fullerton" was and still is on navigable waters, to wit, upon the bay of San Francisco aforesaid, within the admiralty and maritime jurisdiction of the United States, and within the port of San Francisco and Northern District of California, wherein this libel is filed.

VI.

Libelant further states that the cause within this libel set forth is one civil and maritime, to wit, of tort and damage, namely, of collision as aforesaid, and that this libel propounds and articulates in distinct articles the various allegations of [12] fact upon which said libelant relies in support of its suit; so that the above-named defendant may be enabled to answer distinctly and separately the several matters contained in each article, and that all the said premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, the libelant prays that process in due form of law according to the course of this Court in causes of admiralty and maritime jurisdiction may issue against the said barkentine "Fullerton," her tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree the payment of the damages, to wit, \$4,105.62, as aforesaid, in lawful money of the United States, with costs and interest, and that the said vessel may be condemned and sold to pay the same, and that the libelant may have such other and further relief in the premises as in law and justice it may be entitled to.

J. E. FOULDS,
Proctor for Libelant. [13]

Northern District of California,—ss.

W. F. Ingram, being duly sworn, deposes and says: That he is an officer, to wit, the Assistant Secretary of the Southern Pacific Company, above named as libelant herein; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. Affiant further declares that the said Southern Pacific Company, by whom and on whose behalf the claim set forth in said libel is made, is the true and *bona fide* owner of said claim, and that no other person is the owner thereof.

W. F. INGRAM.

Sworn to before me this 23d day of August, 1910.

[Seal]

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 25, 1910. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk. [14]

Monition.

Northern District of California,—ss.

The President of the United States of America, to the Marshal of the United States for the Northern District of California, Greeting:

WHEREAS, a Libel hath been filed in the District Court of the United States for the Northern District of California, on the 25th day of August, in

the year of our Lord one thousand nine hundred and ten:

By SOUTHERN PACIFIC COMPANY, a corporation, against The Barkentine "Fullerton," her tackle, apparel and furniture, in a cause of collision, civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said vessel, her tackle, etc., may for the causes in said Libel mentioned be condemned and sold to pay the demands of the libellant,—

YOU ARE THEREFORE HEREBY COMMANDED to attach the said vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Northern District of California, on the SIXTH day of SEPTEMBER, A. D. 1910, at ten o'clock in the forenoon of the same day, if that day shall [15] be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf.

And what you shall have done in the premises do

you then and there make return thereof, together with this writ.

Witness the Hon. JOHN J. DE HAVEN, Judge of the said Court, at the City and County of San Francisco, in the Northern District of California, this 25th day of August, in the year of our Lord, one thousand nine hundred and ten, and of our independence the one hundred and 35th.

[Seal]

JAS. P. BROWN,
Clerk.

By M. T. Scott,
Deputy Clerk.

J. E. FOULDS,
Proctor for Libellant.

MARSHAL'S RETURN.

In obedience to the within Monition, I attached the barkentine "Fullerton" therein described on the 26th day of August, 1910, and have given due notice to all persons claiming the same that this Court will, on the sixth day of September, 1910 (if that day be a day of jurisdiction; if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I posted a notice of attachment on said barkentine "Fullerton" and handed a copy of this Monition to O. Oleson, person in charge. I also placed a keeper thereon. Attachment made at the drydocks of the Union Iron Works, San Francisco Bay.

C. T. ELLIOTT,
United States Marshal.
By Paul J. Arnerich,
Deputy.

San Francisco, Cal., August 26, 1910.

[Endorsed]: Filed Aug. 31, 1910. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [16]

*In the District Court of the United States of Amer-
ica, Northern District of California.*

IN ADMIRALTY—No. 15,070.

SOUTHERN PACIFIC COMPANY, a Corporation,
Libelant,

vs.

Barkentine “FULLERTON,” etc.

Claim of Mission Transportation & Refining Co.

To the Honorable JOHN J. DE HAVEN, Judge of
the District Court of the United States for the
Northern District of California:

The claim of Mission Transportation and Refining
Company, a corporation, to the barkentine “Fuller-
ton,” her tackle, apparel and furniture, now in the
custody of the Marshal of the United States for the
said Northern District of California, at the suit of
Southern Pacific Company, a corporation, alleges—

That Mission Transportation and Refining Co., a
corp., the true and *bona fide* owner of the said bark-
entine “Fullerton,” her tackle, apparel and furni-
ture, and that no other person is owner thereof.

Wherefore, this claimant prays that this Honor-
able Court will be pleased to decree a restitution of
the same to Mission Transportation and Refining
Company, a corporation, and otherwise right and
justice to administer in the premises. [17]

MISSION TRANSPORTATION AND RE-
FINING COMPANY.

By W. G. TUBBY, Manager.

Northern District of California,—ss.

Subscribed and sworn to before me this 26th day of August, A D. 1910.

[Seal]

FRANCIS KRULL,

Deputy Clerk U. S. District Court, Northern District of California.

PAGE, McCUTCHEN & KNIGHT,

Proctors for Claimant.

[Endorsed]: Filed Aug. 26, 1910. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk. [18]

In the District Court of the United States, Northern District of California.

SOUTHERN PACIFIC COMPANY, a Corporation,
Libelant,

vs.

Barkentine "FULLERTON," Her Tackle, Apparel and Furniture,

Respondent.

MISSION TRANSPORTATION & REFINING
COMPANY, a Corporation,

Claimant.

Answer of Mission Transportation and Refining Company.

To the Honorable JOHN J. DE HAVEN, Judge of the Above-entitled Court:

The answer of Mission Transportation & Refining Company, a corporation, claimant herein, to the libel herein, admits, denies and alleges as follows:

I.

Answering the allegations of paragraph I of said libel, claimant admits the allegations contained in that portion of said paragraph, commencing with the beginning thereof, and continuing down to, and including, the word "libelant," [19] in the seventh line of the second page of said libel.

Claimant has no information or belief sufficient to enable it to answer the allegations contained in that portion of paragraph I of said libel, commencing with the word "that," in the eighth line of page two of said libel, and continuing down to, and including, the word "therefor," in the fourteenth line on the second page of said libel, and, placing its denial thereof on that ground, and for that reason, denies that pursuant to the terms of the lease of said steamer "Transit," or at all, libelant was required to expend, or did expend, all, or any, of the moneys requisite for the repair of the same, by reason of any injury or damage thereto, occurring during its possession thereof; and

For the same reason, claimant further denies that all, or any, of the moneys required for the repairs thereafter set forth, were advanced and paid by said libelant, or that said libelant is a true and *bona fide* owner of any, or all, claims therefor; but claimant admits that no other person, or any person, is the owner of the same, or any part thereof.

II.

Answering the allegations of paragraph II of said libel, claimant denies that during all of the times, or during any of the times therein mentioned, said

steamer was managed, controlled and operated by skillful master, officers, seamen or employees.

Further answering the remaining allegations of said paragraph, claimant admits that said steamer plied regularly in such business as thereinbefore mentioned, [20] across and over the bay of San Francisco, in the State of California, in the United States of America, between the city of Oakland, and the city and county of San Francisco.

III.

Answering the allegations of paragraph III of said libel, claimant admits that on or about the 13th day of December, 1909, at about eleven o'clock P. M. of said day, said steamer "Transit," in command, and under the direction, of the master thereof, and subject to the services of its officers, seamen and employees, and in the operation of the business of libelant, thereinbefore set forth, commenced her regular trips from, and at, said city of Oakland, to said city and county of San Francisco, to the terminus, or point of landing, of said steamer "Transit," at said city and county of San Francisco, known as, and called, Mission Bay slip, adjacent or near to that portion of said bay of San Francisco, known as Mission Bay; and that during said trip of said steamer from the city of Oakland to said city and county of San Francisco, she was interrupted by heavy fog.

Claimant has no information or belief sufficient to enable it to answer the allegations contained in that portion of paragraph III, of said libel, commencing with the word "that" in the sixth line on the third page of said libel, and continuing down to, and in-

cluding the word "Transit," at the close of said paragraph in the thirtieth line on the fourth page of said libel, and, placing its denial on that ground, and for that reason, denies that during her said course thereon, or at any time, said steamer entirely, [21] or at all, proceeded under a slow bell and careful and slow management, and denies that her helm was entirely in the hands of, and under the control of, her master, in the pilot-house thereof; that he then and therein was assisted by the first officer of said steamer, and or one of his deck-hands; and denies that the windows of said pilot-house were retained open and unenclosed, and denies that the fog whistle of said steamer was sounded continuously by such assistant, at intervals of from thirty to forty seconds, and denies that the engines and machinery of said steamer were then and there in charge of and operated by her chief and assistant engineers, and their subordinate employees, under the direction of her said master.

For the same reason, claimant denies that said master and his assistants, or his assistants, as aforesaid, in said pilot-house, or elsewhere, made, during said trip all or any efforts to discover any approaching vessel or danger therefrom or the anchorage of any vessel, in or about its course, or elsewhere, by careful, or any, inspection and discovery, from said pilot-house or any other place of all vessels to which said steamer might be approaching, or which might approach it, or be visible to said master and assistants; and denies that they made any effort of recognition of any, or all, or any, vessel, or fog signals,

of any kind, sounded by any vessel so anchored or approaching, or being approached, or immediately, or at all, perceptible to them, or either of them.

For the same reason, claimant denies that in addition to the officers above mentioned, and said master, [22] or at all, and or for like purposes of safety, there were also, during said trip, or at all, upon the bow of said steamer "Transit" the second officer of the steamer and four deck-hands thereof, or any officer, or deck-hands, whose attention was solely, or at all, occupied in like attempts to ascertain the location of any, or all, vessels anchored or proceeding, or approaching, or being approached, and or to detect the sounding, at any time, of any bell, or any signal, from any such vessel.

For the same reason, claimant denies that twenty-five minutes after leaving said Oakland, or at any time, while upon her course to San Francisco, the master, officers, or deck-hands of said steamer "Transit" heard the fog bell, located at Mission Slip, ringing, and denies that up to said time they had heard no fog bell or fog whistle, from any vessel, nor had seen any vessel anchored, approaching, or being approached by her, or otherwise visible.

And for the same reason, claimant denies that three or five minutes later, or at all, the lookouts, last above mentioned, or any lookouts, reported a light on the port bow of the steamer "Transit," and close aboard, and denies that her helm was put hard to port, and a signal given to her engineers for full speed ahead, and denies that she tried to sheer off from said vessel, indicated by such light, or that it was then too

late to avoid collision with the barkentine "Fullerton," or that the bow thereof was not more than two or three feet back from the forward pilot-house of the "Transit"; except that claimant admits that a light was exhibited on said "Fullerton." [23]

And for the same reason, claimant denies that on the discovery of the position of the barkentine "Fullerton," two bells were given by the master of the "Transit" to his engineers, to stop the engines, but claimant admits that the headway of the steamer "Transit" brought her right about amidships, across the bow of the "Fullerton," and claimant denies that said headway of said steamer "Transit" was slight or slow.

For the same reason, claimant denies that said collision tore off the top of the port paddle-box and bridge of the "Transit," or that the bowsprit of the "Fullerton" tore down the funnel of the "Transit," or that the cut-water and bobstays of the "Fullerton" damaged the guard and springbeam of the "Transit," or that in consequence of said damages, or any damages, resulting therefrom, or connected therewith, the sum of four thousand one hundred and five and 62/100 (\$4,105.62), or any other sum, in lawful money of the United States of America, was actually expended by libelant herein, at its own cost and expense, in the repair of said steamer "Transit."

IV.

Answering the allegations of paragraph IV, of said libel, claimant admits that the barkentine "Fullerton" hereinbefore mentioned, was a four-masted vessel, but claimant denies that at the time of the colli-

sion, heretofore recited, or at any other time, said barkentine was anchored at a point near to the fairway of said steamer "Transit," required for her passage from the city of Oakland to the city and county of San Francisco. [24]

Claimant admits that portion of said paragraph, alleging that during said period, said barkentine "Fullerton" was encompassed by a dense fog, but claimant denies that said barkentine "Fullerton," and or the officers or crew thereof, failed to sound any bell or other fog signal, capable of being heard or recognized by the master, officers, seamen or employees or any vessel upon said passage, or in any wise approaching said "Fullerton," and claimant further denies that by reason of such failure, or any failure, the anchorage and position of said vessel was wholly unknown to, or unrecognizable by, the master, officers, seamen or employees of said steamer "Transit," and further denies that the anchorage and position of said "Transit" was wholly unknown to, or unrecognizable by, the master, officers, seamen and of employees of said steamer "Transit," until after the light on said "Fullerton" had been seen by the master, officers, seamen or employees of said steamer "Transit," under such conditions as to make unavoidable a collision of said "Transit" with said "Fullerton," and claimant further denies that damage and injury to said steamer "Transit," and the outlay therefor, by libelant, occurred as thereinbefore set forth.

V.

Claimant admits the allegations of paragraph V of said libel.

VI.

Answering the allegations of paragraph VI of said libel, claimant denies that the cause within the libel set forth is one of civil and maritime, to wit, of tort and damage namely of collision, as aforesaid, or that there is any cause [25] of action at all, but admits that the libel propounds and articulates the various allegations of fact, upon which said libelant relies, in support of its suit, except that libelant does not admit the truth of said various allegations.

Claimant further denies that the libel propounds and articulates in distinct articles, the various allegations of fact, upon which said libelant relies in support of its suit, so that respondent and claimant may be enabled to answer distinctly and separately, the several matters contained in each article.

Answering the further allegations of said paragraph, claimant admits that said premises are within the admiralty and maritime jurisdiction of the United States, and this Honorable Court, but denies that said premises are true.

VII.

And further answering said libel, claimant alleges the truth to be that on the night of December 13, 1909, at about eleven o'clock, while said barkentine "Fullerton" was properly and lawfully anchored in the bay of San Francisco, and within the anchorage zone fixed by the rules and regulations of the Harbor Commissioners of the Port of San Francisco, and while encompassed by a fog, prevailing over that portion of the waters of the bay of San Francisco, in which said "Fullerton" was anchored, the said

steamer "Transit," while on a trip from the city of Oakland to Mission Bay slip, in the city of San Francisco, ran into, and collided with, said "Fullerton," and seriously damaged the latter, and caused claimant a loss, amounting to the sum of one thousand eight hundred and thirty and [26] 69/100 dollars (\$1830.69); that at and prior to the time of said collision, said "Fullerton" was equipped with the lights and fog bell, required by law, which lights were kept brightly burning, and which fog bell was duly and regularly run, during the prevalence of said fog, by the lookout maintained on board said "Fullerton," as by law required; that the presence and position of said "Fullerton" was well known to the master, officers and crew of said "Transit," and that said collision resulted from no act or fault or neglect on the part of the owners of said "Fullerton," her master, officers or crew, but said collision was solely due to the careless, negligent and unlawful navigation of said steamer "Transit" in said fog.

WHEREFORE, claimant prays that the libel herein may be dismissed, and that it may recover its costs and disbursements herein incurred, and such other and further relief as shall be deemed meet and equitable in the premises.

MISSION TRANSPORTATION & REFINING COMPANY.

By W. G. TUBBY,

Manager Marine Department.

PAGE, McCUTCHEN, KNIGHT, OLNEY,
IRA A. CAMPBELL,

Proctors for Claimant. [27]

State of California,
City and County of San Francisco,—ss.

W. G. Tubby, being first duly sworn, deposes and says: That he is the Manager Marine Department of Mission Transportation & Refining Company, a corporation, claimant herein; that he has read the foregoing answer, and knows the contents thereof, and believes the same to be true.

W. G. TUBBY.

Subscribed and sworn to before me this 30th day of December, 1910.

FRANK L. OWEN,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Dec. 30, 1910. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [28]

*In the District Court of the United States, Northern
District of California.*

No. 15,070.

MISSION TRANSPORTATION & REFINING
COMPANY, a Corporation,

Cross-libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Cross-respondent.

Cross-Libel.

To the Honorable JOHN J. DE HAVEN, Judge of
the Above-entitled Court:

The cross-libel of the Mission Transportation & Refining Company, a corporation, against the Southern Pacific Company, a corporation, articulately propounds and alleges as follows:

I.

That the Mission Transportation & Refining Company, cross-libelant herein, is a corporation duly organized and existing under and by virtue of the laws of the State of California, and was, during all the times herein mentioned, and now is, the owner of the barkentine "Fullerton," an American vessel of about 1554 gross tons, register.

II.

That the Southern Pacific Company, cross-respondent herein, is a corporation duly organized and existing under and by virtue of the laws of the State of Kentucky, and [29] was, during all the times herein mentioned, the time-chartered owner and operator of the steamer "Transit," a car ferry, and was responsible for the acts of the master, officers and crew of said steamer.

III.

That on the night of the 13th day of December, 1909, said barkentine "Fullerton" was properly and lawfully anchored in the Bay of San Francisco, south of the 16th Street fairway, leading to Mission Bay, and within the anchorage zone fixed by the Rules and Regulations of the Harbor Commissioners, governing

the anchoring of vessels in the Bay and Harbor of San Francisco; that said vessel was anchored in said position on the 20th day of September, 1909, by one of the tugs belonging to the Shipowners and Merchants' Tugboat Company, and had there remained during the subsequent intervening period until the happening of said collision.

IV.

That on or about the hour of 11:20 P. M. of said 13th day of December, said steamer "Transit," while making a trip from her usual berth on the Oakland shore to Mission Bay slip, in the city and county of San Francisco, ran into and collided with, said barkentine "Fullerton," striking the forward part of said "Fullerton," and inflicting on her the herein-after mentioned damages.

V.

That at and preceding the time of said collision a heavy fog prevailed over the waters of that portion of San Francisco Bay, in which said "Fullerton" was anchored, [30] and enshrouded said barkentine; that said "Transit" was, at the time of, and preceding said collision, proceeding through said fog at an unlawful rate of speed, and was being navigated without said master being in his proper position, and without the necessary lookouts required by law, stationed on the bow and bridge of said steamer, where said master and said lookouts could have an unobstructed view and range of hearing.

That said steamer "Transit" had traversed said course from Oakland to Mission Bay slip and return, several times a day, during the entire period said

barkentine "Fullerton" was anchored in her heretofore described position, and had, on the same night, at about 9 o'clock P. M., left said Mission Bay slip, and voyaged to Oakland; that by reason of said facts, the master, officers and crew of said steamer "Transit" well knew the location and position in which said barkentine "Fullerton" was anchored, but, notwithstanding said knowledge and said fog, said master negligently and carelessly navigated said steamer at said undue rate of speed, and caused said steamer to collide with said barkentine "Fullerton."

VI.

That said barkentine "Fullerton," during said night of December 13, and at the time of said collision, had stationed on board, the lookout required by law, and was properly and efficiently equipped, during all said time, with the lights and fog bell required by law, which lights were, at the time of, and during all time prior to, said collision, burning brightly, and which fog bell was duly and regularly rung by said lookout during said night, while said fog prevailed, and particularly so rung at, and immediately prior to, the time of said collision. [31]

VII.

That by reason of said collision said barkentine "Fullerton" had her headgear and figurehead carried away, and her stem and bow badly injured, to cross-libelant's damage, in the sum of one thousand eight hundred and thirteen and 69/100 (\$1813.69) dollars.

VIII.

That said collision was due to the improper, care-

less and negligent management and navigation of said steamer "Transit," and was, in no respect, due to any fault or negligence on the part of said barkentine "Fullerton," her officers or crew.

IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

THEREFORE, cross-libelant prays that a citation, in due form of law, according to the course and practice of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said Southern Pacific Company, a corporation, and that it be cited to appear and answer under oath, all and singular, the matters aforesaid, and that this Honorable Court may be pleased to decree payment of the aforesaid sum of one thousand eight hundred and thirteen and 69/100 (\$1,813.69) dollars, with interest and costs herein incurred; and that it may have such other and further relief as may be deemed meet and equitable in the premises.

MISSION TRANSPORTATION & REFINING COMPANY.

By W. G. TUBBY,

Manager Marine Department.

PAGE, McCUTCHEN, KNIGHT & OLNEY,
IRA A. CAMPBELL,

Proctors for Cross-libelant. [32]

State of California,

City and County of San Francisco,—ss.

W. G. Tubby, being first duly sworn, deposes and says:

That he is the manager of the Marine Department of Mission Transportation & Refining Company, a corporation; that he has read the foregoing cross-libel, knows the contents thereof, and believes the same to be true.

W. G. TUBBY.

Subscribed and sworn to before me this 30th day of December, 1910.

FRANK L. OWEN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Dec. 30, 1910. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [33]

Citation.

Northern District of California,—ss.

The President of the United States of America, to
the Marshal of the United States for the North-
ern District of California, Greeting:

Whereas, a cross-libel has been filed in the Dis-
trict Court of the United States for
(Seal) the Northern District of California, on
the 30th day of December, in the year
of our Lord one thousand nine hundred
and ten:

By Mission Transportation & Refining Company,
a corporation, cross-libelant against Southern Pa-
cific Company, a corporation, cross-libelee, in a cer-
tain cause now pending in this court and entitled,
Southern Pacific Company, a corporation, against the
barkentine "Fullerton," her tackle, apparel and fur-

niture, Mission Transportation & Refining Company, a corporation, claimant, in a certain action for damages, civil and maritime, to recover the sum of \$1813.69 (as by said cross-libel, reference being hereby made thereto, will more fully and at large appear), therein alleged to be due the said cross-libelant; and praying that a citation may issue against the said cross-libelee, pursuant to the rules and practice of this court:

NOW, THEREFORE, we do hereby empower and strictly charge and command you, the said Marshal, that you cite and admonish the said cross-libelee, if it shall be found in your District, that it be and appear before the said District Court, on Tuesday, the 17th day of January A. D. 1911, at 10 o'clock in the forenoon at the courtroom in the city of San Francisco, then and there to answer the said cross-libel, and to make its allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness, the Honorable JOHN J. DE HAVEN, Judge of said Court, the 31st day of December, in the year of our Lord one thousand nine hundred [34] and ten, and of our independence, the one hundred and 35th.

JAS. P. BROWN,
Clerk.

By M. T. Scott,
Deputy Clerk.

PAGE, McCUTCHEN, KNIGHT & OLNEY.
Proctors.

MARSHAL'S RETURN.

I have served this writ personally by copy on Southern Pacific Company (a corporation), the cross-libellee herein named, by handing to and leaving with F. H. Reed, who is the person designated by the defendant under the Statutes of the State of California, upon whom all legal process shall be served in matters affecting the Southern Pacific Co. (a corp.) in the State of California, an attested copy of the annexed Citation in the City and County of San Francisco, in the State and Northern District of California, January 3, 1911.

Dated at San Francisco, California, this fourth day of January, A. D. 1911.

C. T. ELLIOTT,

U. S. Marshal.

By M. J. Fitzgerald,

Office Deputy Marshal.

[Endorsed]: Filed Jan. 5, 1911. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [35]

*In the District Court of the United States, Northern
District of California.*

No. 15,070.

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,

Cross-libellant,

vs.

SOUTHERN PACIFIC COMPANY,

Cross-respondent.

Answer to Cross-Libel.

The answer of Southern Pacific Company, cross-respondent herein, to the cross-libel herein, denies, admits and alleges as follows:

I.

As to Article I of said cross-libel, this respondent admits the allegation thereof.

II.

As to Article II of said cross-libel, this respondent admits the allegations thereof.

III.

As to Article III of said cross-libel, this respondent denies that the said barkentine "Fullerton" was properly or lawfully anchored in the bay of San Francisco, south of the Sixteenth Street fairway, leading to Mission Bay, or elsewhere, or within the anchorage zone fixed by the Rules and Regulations of the Harbor Commissioners, governing the anchorage of vessels in the bay and harbor of San Francisco, or elsewhere, or that said vessel was anchored in said or [36] other proper or lawful position on the 20th day of September, 1909, or at any other time, by one of the tugs belonging to the Shipowners and Merchants' Tugboat Company, or any other tug, or other instrument intended for use in such anchorage, or that thereafter, or at any time subsequent to such anchorage, said barkentine had remained at such anchorage during the subsequent intervening period, or any part thereof, until the happening of said collision.

IV.

This respondent denies that on or about the hour

of 11:20 P. M. of the 13th day of December, 1909, or at any other time, the steamer "Transit," in said cross-libel mentioned, while making the trip therein referred to, or any other trip of like character, ran into, or collided with, the barkentine "Fullerton," striking the forward part of said "Fullerton," or inflicting on her the damages mentioned in said cross-libel, or any damages whatsoever, by reason of any negligence upon the part of said steamer "Transit" or the master or any officer, seaman, or other person in charge of, or engaged in, the navigation or operation of said steamer.

V.

This respondent admits that at and preceding the time of the collision in said cross-libel referred to, a heavy fog prevailed, as in paragraph V thereof mentioned, but denies that said "Transit" was at the time thereof, and or preceding said collision, proceeding through said fog at an unlawful rate of speed, or was being navigated without the master thereof being in his proper position, or without the necessary lookouts required by law, stationed on the bow and ridge, or bow or ridge [37] of said "Transit," or elsewhere, where said master or lookouts could have *have* unobstructed view and range of hearing. On the contrary, respondent alleges that said master, and all necessary officers, lookouts, seamen and others, at all places upon said vessel intended or prescribed by law, or maritime practice or custom, were stationed, and as set forth in the original libel herein attempted and described, fully sought for, and would have recognized, had any such recognition been pos-

sible during said fog, the place of anchorage or location of said "Fullerton," and endeavored, as far as possible, to avoid collision therewith. This respondent further denies that, by reason of any of the facts set forth in paragraph V of cross-libel set forth, the master, officers or crew of "Transit" well or at all knew the location or position in which said "Fullerton" was anchored, or that notwithstanding any such knowledge, or said fog, said master, or any person, officer or seaman, in charge of, or employed upon said "Transit," either negligently, or carelessly or otherwise, improperly navigated or operated same at any undue rate of speed, or caused same to collide with said barkentine "Fullerton." On the contrary, this respondent alleges that during the existence of said fog said barkentine had no officer, lookout, or person thereon, who regularly, or at any time during the continuance of said fog, as required by rules and regulations of the United States Government, or of the State of California, or in anywise by maritime customs or rules, sounded, at intervals, or at all, such signals, by lights, bells or otherwise, necessary to advise approaching vessels of the location [38] of said barkentine "Fullerton," and that by reason of such failure said steamer "Transit" was unable to discover her location until the time when she necessarily collided with her.

VI.

This respondent denies each and all of the allegations contained in paragraph VI of said cross-libel.

VII.

This respondent alleges that it is without informa-

tion thereon, and therefore denies that by reason of the collision alleged in said cross-libel, or any collision between said "Transit" and barkentine "Fullerton," said last-mentioned vessel was injured to cross-libelant's damage in the manner, or otherwise, or to the sum, or any sum, as in paragraph VII of said cross-libel set forth.

VIII.

But as to paragraph VIII of said cross-libel, this respondent denies that said or any collision was due to improper, careless or negligent management or navigation of said steamer "Transit," or was not, in any respect, due to any fault or negligence on the part of said barkentine "Fullerton," her officers or crew. On the contrary, this respondent alleges that said collision, or any damage resulting therefrom, was caused by fault or negligence on the part of said "Fullerton," her officers or crew, and by no fault or negligence whatsoever on the part of the master, officers or crew of steamer "Transit."

IX.

Except as heretofore admitted, all of the premises alleged [39] in said cross-libel are untrue, and this respondent therefore respectfully prays that said cross-libel be dismissed, and that it obtain and receive a decree for its costs and expenses herein.

SOUTHERN PACIFIC COMPANY.

By W. F. INGRAM,

Assistant Secretary.

J. E. FOULDS,

Proctor for Cross-libelant.

State of California,
City and County of San Francisco,—ss.

W. F. Ingram, being first duly sworn, deposes and says: That he is an officer, to wit, the Assistant Secretary of the Southern Pacific Company, cross-respondent herein; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

W. F. INGRAM.

Subscribed and sworn to before me this 5th day of January, 1911.

[Seal]

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jan. 17, 1911. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [40]

Minutes of Trial, etc.

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 17th day of January, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable FRANK S. DIETRICH, Judge.

No. 15,070.

SOUTHERN PACIFIC COMPANY,

vs.

The Barkentine "FULLERTON," etc.

This cause this day came on for hearing, L. T. Hengstler, Esqr., and E. J. Foulds, Esqr., appearing for libellant, and Ira A. Campbell, Esqr., appearing for respondent. Mr. Hengstler stated the cause to the Court and called Wm. H. Higginson Ernest D. Richelt, Richard M. Fahrenholtz, Harry A. Johnson, Phillip Olson, Olaf Wallon and A. Healey, who were each duly sworn and examined as witnesses on behalf of libellant.

Mr. Campbell called Robert Boys Hemming, Jr., who was duly sworn and examined as a witness on behalf of claimant, and introduced in evidence certain exhibits which were marked Claimant's Exhibits #2, 3, 4, 5, 6 and 7, respectively. The further hearing of this cause was thereupon continued until January 20, 1913. [41]

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 20th day of January, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable FRANK S. DIETRICH, Judge.

No. 15,070.

SOUTHERN PACIFIC COMPANY,

vs.

The Barkentine "FULLERTON," etc.

Order Submitting Cause, etc.

The proctors for the respective parties being pres-

ent in open court, the further hearing of this cause was resumed. Ira Campbell, Esqr., proctor for claimant, called John Olsen, Alexander A. McAdie, R. B. Hemming, Frank Elwood Ferris, who were each duly sworn and examined as witnesses on behalf of claimant of barkentine "Fullerton." Mr. Campbell offered in evidence all depositions taken on behalf of said claimant.

Mr. Hengstler, proctor for libelant, recalled Wm. H. Higginson, who was further examined. The cause was then argued by respective proctors, and thereupon by the Court ordered that said cause stand submitted to the Court for decision. [42]

Testimony Taken in Open Court.

[Statements and Stipulations of Counsel Regarding Facts, etc.]

Mr. HENGSTLER.—If your Honor please, this is the case of a collision that occurred between the Southern Pacific car ferry "Transit" and the barkentine "Fullerton," on December 13, 1909. Some of the facts stated in the libel in Article 1 are denied by the answer, but I understand that Mr. Campbell, the counsel on the other side, will admit those facts, so that it will not be necessary to prove them. That is correct, is it not, Mr. Campbell?

Mr. CAMPBELL.—I have stipulated with Mr. Hengstler that we admit the allegations of paragraph 1 of the Southern Pacific libel, so far as they relate to the ownership or operation of the car ferry "Transit" and so far as respects the allegations of the

expenditure of money by the Central Pacific or Southern Pacific Railway Company.

Mr. HENGSTLER.—That leaves nothing that is denied in that article.

Mr. CAMPBELL.—No, except, of course, that we do not admit the amount or the cost of the repairs.

Mr. HENGSTLER.—No, that is understood.

Mr. CAMPBELL.—We admit all of the allegations of paragraph 1 except that the question of the cost of the repairs will be left to proof before the Commissioner in accordance with the usual practice. If the “Transit” is entitled to a recovery it eliminates all questions about the Southern Pacific being entitled to the money. Those are all the stipulations with reference to article 1.

Mr. HENGSTLER.—I suppose your Honor will probably follow the usual practice of this Court of referring the damages, if damages are found, to a Commissioner, so that it will not be taken up at this time.

The COURT.—Yes. [43]

Mr. CAMPBELL.—We might get all of the stipulations in the record at this time. Counsel for the Southern Pacific has stipulated with me an admission that the lights of the “Fullerton” were all right, and they were burning and proper.

Mr. HENGSTLER.—That they were brightly burning—in one respect I do not think I stipulated that they were all right, because in one slight respect they were not all right according to the testimony of your witness, as given in the deposition. The deposition itself showing that in a minor respect the

lights were not properly placed.

Mr. CAMPBELL.—Did you mention that to me yesterday when we were going over that?

Mr. HENGSTLER.—No; I did not notice that until I read the deposition in the meantime; however, we do not make a point that that has any bearing upon the collision itself, on the facts of the collision, except that it may have an indirect bearing upon the knowledge of the captain of the rules of collision.

The COURT.—The knowledge of the captain of what?

Mr. HENGSTLER.—Of the rules of collision.

Mr. CAMPBELL.—That is, the captain's knowledge of the law.

Mr. HENGSTLER.—The rules of navigation, the captain's knowledge of the rules of navigation. I will tell you now, Mr. Campbell, what my expectation is. The captain testified that the riding lights or anchor lights of the "Fullerton," while she lay at anchor in the bay were at a certain altitude; that shows they were not, as far as the height of the lights is concerned, properly placed under the rules of navigation. But I am perfectly willing to stipulate that they were burning brightly.

Mr. CAMPBELL.—That your vessel saw them?

Mr. HENGSTLER.—And that our vessel saw them. [44]

Mr. CAMPBELL.—Mr. Hengstler and I went over this entire matter yesterday at my office, and reached a definite understanding as to the stipulations, and this now is a new matter. If necessary I will produce the letter from your company admitting that.

Mr. HENGSTLER.—Admitting that they were burning brightly, that is the way we stipulated.

Mr. CAMPBELL.—I have that memorandum on my desk that was made in your presence.

Mr. HENGSTLER.—We will let the stipulation go in that modified form; we admit that the lights were burning brightly.

Mr. CAMPBELL.—Very well. If necessary I will prove it some other way.

Mr. HENGSTLER.—I cannot admit that the witness on the stand, the chief witness, the captain has already testified to, that they were not fixed at the proper height under the law.

Mr. CAMPBELL.—The witness in my judgment has not testified to that.

Mr. HENGSTLER.—If he has not, that will come out during the trial. Your Honor's attention will be called to his testimony during this hearing.

Mr. CAMPBELL.—But it is stipulated that they were burning brightly, that they were the proper lights and were lighted.

The COURT.—You admit that the lights were all right with the exception of their height, their elevation?

Mr. HENGSTLER.—Yes.

Mr. CAMPBELL.—The stipulation also includes the admission that the tide was flooding at the time of the collision, the tide was coming in at the time.

Mr. HENGSTLER.—That is stipulated. [45]

Mr. CAMPBELL.—The stipulation further includes the understanding that the most southerly line of the forbidden anchorage in San Francisco

Bay extends from the end of the 16th Street dock to the Southern Pacific Mole, is that correct?

Mr. HENGSTLER.—Being the line shown by the letters A-B.

Mr. CAMPBELL.—Yes, A-B on “Claimant’s and Cross-libelant’s Exhibit 1,” and that the forbidden anchorages shown on “Claimant’s and Cross-libelant’s Exhibit 1” is indicated by the lines E-G and C-E were not established at the date of the collision.

Mr. HENGSTLER.—They were established three days later, to be absolutely correct.

Mr. CAMPBELL.—Well, have it that way; but you do admit they were not forbidden anchorages at the time of the collision?

Mr. HENGSTLER.—Certainly.

The main facts and the admitted facts are these, you Honor: that the “Fullerton” was lying at anchor in the *neighborhood Mission Bay*. There will be some conflict in the testimony as to the exact spot where she was lying at anchor. The captain of the “Fullerton” in his deposition has testified that she was at the point which is marked “F” on the chart. While she was lying at anchor on the 13th of December, 1909, in the night-time, there was a collision between her and the car ferry “Transit” of the Southern Pacific Company, the “Transit” then being engaged in a trip from the Oakland side of the bay to the San Francisco side, from the Southern Pacific wharf on the Oakland side to the Mission Slip, the Southern Pacific Slip in Mission Bay on the San Francisco side. If your Honor cares, I will point those out.

The COURT.—I think I have got them in mind sufficiently.

Mr. HENGSTLER.—On that trip the Southern Pacific car ferry collided with the “Fullerton,” the “Fullerton” lying at that [46] time at anchor. I think it is also admitted that it was a very foggy night, that the fog was very thick at the time.

The COURT.—You needn’t go into that matter. I think I understand what the issue is. You may proceed.

[**Testimony of William H. Higginson, for Libelant.**]

WILLIAM H. HIGGINSON, called for the libelant, sworn.

Mr. HENGSTLER.—Q. Captain Higginson, how old are you? A. I am 64.

Q. What is your business?

A. Steamboat-man; master.

Q. What was your business on the 13th of December, 1909?

A. I was captain of the steamer “Transit,” Southern Pacific transfer boat.

Q. How long had you been the Captain of the steamer “Transit” at that time?

A. In the neighborhood of 10 years.

Q. And you still are the captain of that steamer, are you? A. Yes.

Q. You remember the occurrence on December 13th, 1909, when the collision happened between the “Transit” and the “Fullerton,” do you not?

A. Yes.

Q. About what time did the collision happen?

A. I left the Oakland pier with the steamer

(Testimony of William H. Higginson.)

“Transit” at 10:53, and the collision occurred, according to my log-book, the entry was made by the second officer, at 11:25.

Q. Under whose command was the steamer when you left the Oakland Slip?

A. I was in command.

Q. You mentioned, did you not, that these hours are in the night-time? A. The night-time, yes.

Q. You left the Oakland Slip at 10:53?

A. Yes.

Q. In the night-time? A. Yes. [47]

Q. What was the destination of the steamer at that time? A. Mission Bay Slip, 16th Street.

Q. How was the weather? A. Dense fog.

Q. Under what speed did the steamer “Transit” proceed on the trip across the bay?

A. Well, she was under a slow bell, that is, as close as we could shut her off without losing steerage-way. I should say, perhaps, 7 miles an hour; perhaps a little more or perhaps a little less.

Q. Who was at her helm? A. I was.

Q. Whereabouts on board of her were you?

A. I was on the starboard side of the pilot-house on the forward end of the boat, 100 feet from the bow or thereabouts.

Q. How high above the main deck of the steamer, about, Captain, was the pilot-house?

A. I should say about 20 feet.

Q. Was there anybody else in the pilot-house?

A. Yes.

Q. Who was there?

(Testimony of William H. Higginson.)

A. My first officer and the Assistant Pilot Fahrenholtz.

Q. Was there any signal given on the part of your steamer at the time?

A. Yes, we were blowing continual fog signals, one short blast at intervals of 30 or 40 seconds.

Q. Who sounded that signal?

A. The assistant pilot, Mr. Fahrenholtz.

Q. The man who was in your pilot-house with you?

A. Yes.

Q. What kind of a place is the pilot-house with reference to being shut in or open?

A. All open; glass all around.

Q. How was it at night during the trip?

A. The two front windows were open.

Q. Are they usually open, the two front windows?

A. Always when my boat is under way.

Q. Why?

A. So as to be able to see and hear, that is, I would [48] have to remark in foggy weather; we only have one open in clear weather, as a general thing, and that is the one in front of the captain, of the man at the wheel.

Q. You attended to the wheel yourself?

A. Yes.

Q. What was the first officer doing in the pilot-house?

A. He was on the port side with the window open; he was leaning out, in fact, right out in front with his hand on the sill.

Q. Leaning out of where?

(Testimony of William H. Higginson.)

A. Leaning outside of the pilot-house with his head to listen and see—to listen more than anything else.

Q. What was the third man doing?

A. He was standing between the wheels, blowing the signal, the fog-signal.

Q. Were there any other members, any other officers or members of the crew on the “Transit” during that trip?

A. The second officer was on the main deck.

Q. What was his duty at that time?

A. To see to it that he had his men placed in position on a lookout, for a lookout in the fog.

Q. Who was on the lookout?

A. There were four men besides the second officer, five on the bow right forward, in front of the cargo, box-cars.

Q. Where were they stationed?

A. Right on the bow.

Q. Could you see these men from where you were?

A. Some of them I could, but the others were shut off from the box-cars.

Q. How did you steer across the bay, by what method, Captain?

A. Well, my usual course that I had was southwest by south. On this occasion I kept her a little higher, because I was under a slow bell, perhaps a half a point higher, that is, southwest half south.

Q. Has the condition of the tide anything to do with your changing your regular course? [49]

A. It makes a difference of from 2 to 2½ points

(Testimony of William H. Higginson.)

on a compass, whether it is flood or ebb.

Mr. CAMPBELL.—21½ points, did you say, Captain? A. 2 to 21½ points.

Mr. HENGSTLER.—Q. Did you hear or was there reported to you any whistle or any bell during the trip from the Oakland Mole to the San Francisco side?

A. Whistles were reported, but no bells.

Q. Whistles were reported?

A. Yes, but no bells.

Q. Was there any whistle in the immediate neighborhood or were they far-away whistles?

A. Well, they were right after we left the slip. We heard a whistle almost ahead. We considered it was the narrow-gauge boat, and I stopped my boat until I got my bearings, perhaps a minute, or maybe a minute and a half until I got my bearings, where that whistle was, and then I started up ahead again.

Q. What was the next whistle, if any, that you heard?

A. I heard whistles to the north of me, which probably were ferry-boats, but not in my way at all.

Q. Were there any lights reported at all?

A. Not before they reported the light of the barkentine "Fullerton." Prior to that time I had heard my slip-bell.

Q. Before the light was reported?

A. Before the light was seen.

Q. You heard the slip-bell? A. Yes.

Q. What do you mean by the slip-bell?

A. The bell that was rung on the end of the slip,

(Testimony of William H. Higginson.)

which rings on the dock, by the slip.

Q. You mean on the waterfront here in San Francisco? A. Yes.

Q. You heard that before the "Fullerton's" lights were reported to you? A. Yes.

Q. Who reported the "Fullerton's" lights?

A. The second officer, from the bow. It was his voice that I [50] heard reporting a light on the port bow close aboard.

Q. Will you tell the Court, if you please, what you did after that, within your knowledge?

A. I was watching my compass and making my course to the best of my ability when I heard the report from the bow "a light on the port bow close aboard." I looked up instantly and seen the light then, and I instantly shoved my helm to port and struck the jingle bell to go ahead full speed; and then I looked up again and seen there was no chance to avoid her, and at the same time I heard my first officer say "Stop her, Captain," and I did so; I rang the bell. At that time the light was over my jack-staff, and the first officer ducked down, he thought the jib-boom of this bark was going to catch the pilot-house, catch him, and he ducked to avoid it, and we landed right across her bow, and she took our smokestack out, and we got in under her jib-boom, and her jib-boom carried away our box-cars. I couldn't tell what damage she done actually right then, but we got a line on her and held on to her and drifted up the bay quite awhile; the weight of the boats carried the anchor along, made it drag, and

(Testimony of William H. Higginson.)

carried us out of that position.

Mr. FOULDS.—Q. What was the purpose of your ringing the jingle-bell—for full speed?

A. To try to avoid her, if there was any chance to make the boat swing past her, but the light was closer than I thought, and I thought the best thing to do, I knew the best thing to do would be to stop the boat entirely and keep from having too much speed on.

Q. How long, in a general way, was the interval between the time when you rang to go full speed ahead and the time you rang to stop?

A. It might have been 10 seconds or it might have been less, or it might have been more. It was a very few seconds, anyhow. You know in a case of that kind, why a man don't figure down [51] the exact time, he can only give it as a general thing.

Mr. HENGSTLER.—Q. Did I understand you to say that you saw the light of the "Fullerton" and you heard a bell at that time?

A. No; no bell.

Q. I was mistaken?

A. No bell. I seen his light, but no bell.

Q. You saw a light, but you did not hear any bell?

A. No.

Q. Were you watching for the bell yourself, to hear any bell?

A. I could have heard, but I could not see simply because my eyes were pointing to the compass; but I could hear anything that was going on. I heard our slip-bell.

(Testimony of William H. Higginson.)

Q. Were you listening for bells, whistles or signals?

A. I was listening for bells. We knew that the "Fullerton" was there in some position somewhere, but we thought on account of not hearing her bells that we were far enough to the northward not to hear it.

Q. At any time after the collision did you hear any bells besides the slip-bell, the Mission Slip-bell?

A. I lost the Mission Slip-bell after the collision. We drifted away from it and lost the sound.

Q. You lost even the Mission Slip-bell, you drifted away, drifted too far away to hear it after the collision? A. Yes.

Q. Did you hear the "Fullerton's" bell after the collision at any time?

A. Yes, after we made fast to her, then they started to ring the bell. I started to ring my bell first for fear of colliding with something else. I ordered my bell to be rung, and then the "Fullerton" started to ring her bell, too.

Q. But you did not hear the "Fullerton's" bell before the collision? A. No.

Q. And I understand you were listening for bells?
[52]

A. Distinctly; that is all we could go by, the sound.

Cross-examination.

Mr. CAMPBELL.—Q. Captain, what was the position of the "Transit" with respect to the "Fullerton" at the time you rang your full speed astern bell? A. Full speed ahead, you mean?

(Testimony of William H. Higginson.)

Q. The stop bell; you never reversed full speed astern, did you? A. No.

Q. Never backed your vessel at all? A. No.

Q. What was the position of the "Transit" with respect to the "Fullerton" at the time you rang your stop-bell?

A. I didn't ring any stop-bell—when I rang the stop-bell—I rang the jingle-bell first.

Q. What is the jingle-bell?

A. That is to go ahead full speed.

Q. I am asking you now, what was the position of your vessel with respect to the "Fullerton" when you rang the stop-bell?

A. 3 or 4 points on the bow; the "Fullerton" was right on my port bow. Her lights seemed to be right over the jack-staff when I seen the lights first.

Q. 3 or 4 points on the bow, was it? A. Yes.

Q. It was on your port bow?

A. Yes, a little on the port bow.

Q. But ahead of you? A. And ahead.

Q. You did not at that time reverse full speed?

A. No; stopped.

Q. Have you your log-book here? A. Yes.

Q. May I see it, please?

Mr. HENGSTLER.—There it is (handing).

Mr. CAMPBELL.—Q. I refer to the page of the log-book which is headed December 12 and 13.

A. Yes, you will see it is headed that way every 24 hours.

Q. Where does that run from?

A. That runs from 8 o'clock in [53] the morn-

(Testimony of William H. Higginson.)

ing of the 12th to 8 o'clock in the morning of the 13th.

Q. What do those figures on the left-hand side of the page represent, 196?

A. That is the number of the trip.

Q. The number of the trip?

A. Yes, the number of the trips that we make.

Q. Do you number a trip across the bay and back as one trip?

A. Across the bay is one trip and back is one trip. That gives the number of trips across the bay during the month.

Q. According to this log, then, you left Oakland Pier at 8:01 o'clock on the night of December 13th?

A. Yes.

Q. Look at the log. One minute after 8 you left Oakland Pier? A. Yes.

Q. And you arrived at the Mission Bay Slip at 8:40? A. Yes.

Q. And then you left Mission Bay Slip at 9:30 the same evening? A. Yes.

Q. And arrived at Oakland Pier at 10:24?

A. That is right.

Q. And then left the Oakland Pier at 10:50?

A. Yes, 10:53.

Q. Where are your courses indicated on the log?

A. They are not indicated on the log; we do not keep them that way.

Q. Have you any record of them at all?

A. No, not the courses; we don't keep them. We steer the same course year after year, day after day,

(Testimony of William H. Higginson.)

month after month, right along, the Ferry system.

Q. Were you on watch at the time you left Oakland Pier at 8:01 and got across to Mission Bay Slip at 8:40?

A. Yes, I was on watch, but I was not at the wheel on that trip.

Q. You were on deck, were you?

A. No, I was in the pilot-house. My first officer took her over across the bay.

Q. Who brought her back? A. I did.

Q. On the 9:30 trip? A. I did. [54]

Mr. CAMPBELL.—Will you consent to the use of this chart? It is one furnished by the State Board of Harbor Commissioners as a correct chart of the waterfront.

Mr. HENGSTLER.—I do not think it is drawn to scale, is it? You do not mean as far as the scale is concerned?

Mr. CAMPBELL.—No. I don't care anything about that.

Mr. HENGSTLER.—In its general features I have no doubt it is correct; it is an official chart?

Mr. CAMPBELL.—It is merely a copy of one you have.

Mr. HENGSTLER.—It is similar to it.

Mr. CAMPBELL.—You will admit that the anchorage which I mark with the two crosses was not established at the time of the collision?

Mr. HENGSTLER.—That is already admitted.

Mr. CAMPBELL.—That the southerly line of the

(Testimony of William H. Higginson.)

anchorage extended from the pencil-mark to the Oakland Mole?

Mr. HENGSTLER.—That the line you just drew is the line A-B.

Mr. CAMPBELL.—The line A-B on this chart, which I will ask to have marked “Claimant’s Exhibit 2.”

(The chart is marked “Claimant’s Exhibit 2.”)

Q. Now, Captain, I understand that you left the Oakland Mole at the point where there is a star, or did you leave at the Alameda Mole?

A. No, I left at the Oakland Mole. This is the slip here (pointing).

Q. You left from the slip marked with the figure 1 on “Claimant’s Exhibit 2”? A. Yes.

Q. Is that where you left from to go on this trip?
A. Yes.

Q. And your destination was where?

A. That slip there (pointing).

Q. At the San Francisco shore opposite the letter “A” on “Claimant’s Exhibit 2”?

A. Yes. You see this is the 16th Street Slip [55] here.

Q. The broken portion of the chart in the form of a wedge indicates the slip?

A. Yes, that is the slip.

Q. What was your course from the Oakland side of Mission Bay slip? A. Southwest by south.

Q. Southwest by south?

A. That is the regular course that we steer.

Q. At flood tide? A. Yes.

(Testimony of William H. Higginson.)

Q. What was the course you were steering that night? A. Southwest, about half south.

Q. You steer that course on the flood tide, and you had a flood tide on this night? A. Yes.

Q. Your regular course was southwest by south?

A. Yes.

Q. On this night you were steering a course southwest half south?

A. I was running on a slow bell; that made half a point to the north in order to make up for the slow time.

Q. The "Fullerton" was anchored some place to the eastward of the Mission Bay Slip, was it not?

A. Yes, from this slip here the "Fullerton" lay east northeast, perhaps 1,000 yards off. I don't know how far. I did not measure it. I got her bearings simply to avoid her in case of a fog.

Q. When did you take those bearings?

A. A couple of days previous when they came to the anchorage after the storm; the vessels had been blown around; we had a heavy southeast storm. I have not got the date of it, but it was 3 or 4 days previous to this collision, and in the meantime they had moved the Spreckels boats out and moved them up again, but whether the "Fullerton" was moved or not I don't know, but I took her bearings in order to avoid her. We always do that.

Q. To get this clear in the record—the "Fullerton" had been [56] anchored at some point approximately off Mission Bay Slip? A. Yes.

Q. Your San Francisco shore landing?

(Testimony of William H. Higginson.)

A. Yes.

Q. Sometime prior to the collision?

A. Yes.

Q. As a matter of fact, she had been anchored in that vicinity since September, had she not?

A. She had been anchored there quite awhile in that vicinity, yes.

Q. For 2 or 3 months?

A. I could not tell you. I know only about three days previous to this collision that she was there then.

Q. Do you mean to tell me the first notice you took of the "Fullerton" was three days before the collision?

A. Yes, because she was then in our fairway. I don't know whether it was three days; it might have been 3 or 4. It was after the storm was over.

Q. Had you ever taken notice of her before that?

A. I had seen her, but she was not where I had occasion to take bearings of her.

Q. You knew she was in that vicinity?

A. Yes.

Q. As a matter of fact, on several occasions in passing across the bay you had run so close to the "Fullerton" it was necessary for them to haul their boats in?

A. On the last 3 or 4 days she was in our fairway.

Q. Was it confined to that time?

A. It was confined to a few days before the collision, after the storm, after the southeast storm.

Q. At the time you say you took a bearing of her?

(Testimony of William H. Higginson.)

A. Yes.

Q. What was the bearing?

A. From the slip, where my boat lay in the slip, it was east northeast.

Q. From where your boat lay in the slip?

A. Yes. [57]

Q. Where was that bearing taken from?

A. From the pilot-house on the forward end of the boat.

Q. Which way does the slip lay?

A. The slip lays northeast and southwest.

Q. Northeast and southwest?

A. Yes; the slip lays that way.

Q. And this bearing was what?

A. East northeast.

Q. East northeast? A. Yes.

Q. So that the night that you left the Oakland Long Wharf, you had the bearing of the "Fullerton." You knew where she was?

A. I knew where she was when I left the day before, two days before,—we knew just about what her bearing was from the slip.

Q. Didn't you see her when you left the San Francisco side at 9:40 that night? A. Yes, I did.

Q. Where was she then?

A. She was still there in the same place.

Q. So when you left the Oakland Pier at 10:53, you knew where the "Fullerton" was? A. Yes.

Q. With respect to the Mission Bay Slip?

A. Yes.

Q. You knew that she had been anchored off that

(Testimony of William H. Higginson.)

Mission Bay Slip for two or three months prior to that time?

A. Well, I knew she was in that position only two or three days or three or four days.

Q. How far was she from that position during the two or three months?

A. I could not tell you. I did not take any notice at all; she was not in my fairway or near it; that is, not of sight but it was there, but she was not in my fairway.

Q. When you left the Oakland Pier you were in command, were you? A. Yes.

Q. And you were in the pilot-house? A. Yes.

Q. You were doing the steering of the vessel?

A. Yes. [58]

Q And you were navigating in a fog?

A. Yes.

Q. You were looking at the compass? A. Yes.

Q. And you were actually in the command of the ship at the time? A. Yes.

Q. And the only other navigating officer that was above the lower deck of the vessel was the first officer and the pilot? A. Yes.

Q. And the first officer was in the pilot-house with you? A. Yes.

Q. And the pilot was in the pilot-house with you?

A. No, no pilot; a man to assist the pilot.

Q. I thought you said assistant pilot. So that you were navigating this steamer across the San Francisco Bay? A. Yes.

Q. Where you knew that there are numerous

(Testimony of William H. Higginson.)

boats plying, didn't you? A. Yes.

Q. With no navigating officer outside of the pilot-house?

A. We had an officer outside of the pilot-house, the licensed officer outside of the pilot-house.

Q. Down on the main deck?

A. On the main deck.

Q. Forward of the freight-cars? A. Yes.

Q. Acting as a lookout? A. Yes.

Q. And there was not in command of this vessel a navigating officer outside of the pilot-house while you were crossing the bay that night in the fog? Was there or was there not?

A. There was no navigating officer outside of the pilot-house; they were in the pilot house.

Q. The second officer, he was down on the fore-deck? A. Yes.

Q. In front of these freight-cars? A. Yes.

Q. He was not in command of the vessel at the time, was he? A. No. [59]

Q. He was merely acting in the capacity of a lookout? A. That is right.

Q. Is it customary to have five men standing on watch as a lookout on sea-going vessels?

A. This is a ferry-boat.

Q. Why did you have the five lookouts?

A. There was five men on the bow; there was four men and the second officer, so as to be able to catch, either one of them, a sound or a light or see something.

Q. Is that customary with you?

(Testimony of William H. Higginson.)

A. On all ferry-boats.

Q. On your ferry-boats? A. Yes, all of them.

Q. Do the passenger ferry-boats maintain four men on the main deck?

A. I don't know how many they maintain; they can't have all of the crew. I can. I have no passengers to look after. They have 3 or 4 men on all passenger boats.

Q. Why is it necessary for you to maintain five men out on the fore-deck as lookouts?

A. Well, some one might see more than the other, or hear something of the kind.

Q. As a matter of fact, it is because your vessel is a side-wheel vessel, is it not? A. Yes.

Q. And her paddle-wheels make a great deal of noise, and her steam exhaust makes a great deal of noise? A. No, no noise.

Q. Don't the blowing off of the steam make a great deal of noise?

A. No; there is no pressure at all.

Q. Don't the blowing off of steam make a great deal of noise? A. No; she is a low-pressure boat.

Q. This boat is designed to carry freight-cars?

A. Yes.

Q. You take a train of freight-cars down on the vessel? A. Yes.

Q. How many tracks do you have? A. Two.

Q. So you are carrying two trains of cars?

A. Yes.

Q. And the deck of the vessel, how many feet is that above the water? [60]

(Testimony of William H. Higginson.)

A. Well, I should judge 8 feet—6 to 8 feet, according to the kind of load you have on.

Q. So that the lookouts, these five men, were down in the forward part of this vessel at a distance of about 8 feet above the water? A. Yes.

Q. Between them and your pilot-house were these freight-cars? A. Yes.

Q. So you could not see from your pilot-house the men on lookout?

A. I could see one man between the cars. I knew the others were there.

Q. Between the cars?

A. I could see one man between the cars.

Q. Did you ever see a group of five men together where there was not a conversation going on?

A. They did not stand together.

Q. Did you see them this night? A. No.

Q. You don't know but what a conversation was going on, do you?

A. I have an officer that will testify to that fact.

Q. I am asking about your knowledge.

A. Not to my knowledge; no.

Q. You think it necessary to maintain five men as lookouts because of the noise that the paddle-wheels made interfering with the hearing?

A. You couldn't hear the paddle-wheels forward.

Q. You couldn't hear them? A. No.

Q. Why was it necessary to maintain the five lookouts on this vessel then?

A. It is customary; that is all.

Q. It is customary? A. Yes.

(Testimony of William H. Higginson.)

Q. As a matter of fact, you could hear those paddle-wheels any place on board your ship, couldn't you? A. Well, you might and you might not.

Q. How was the wind blowing that night?

A. There was no wind blowing, it was foggy.

Q. Doesn't the wind blow when it is foggy?

A. Very seldom; it [61] was dead calm on this occasion.

Q. Are you saying that because of a recollection that it was, or are you giving your conclusion that the wind does not blow when it is foggy?

A. I am saying on this occasion there was not any wind on that evening; on that night there was no wind.

Q. How was the wind, if there was any, blowing?

A. When there is any wind you cannot tell anything about how it is because the boat going creates a wind of her own.

Q. The reason you say you had no wind that night is because you could not feel any breeze coming into the pilot-house? A. No.

Q. If you were running before the wind you would not feel it?

A. If there was any wind I would feel it more or less coming into the pilot-house.

Q. If there was a wind and you were running before the wind you would not feel it in the pilot-house? A. No.

Q. That night you did not feel any wind coming into the pilot-house? A. No.

Q. When you started from Oakland Pier was

(Testimony of William H. Higginson.)

there any fog? A. Yes.

Q. There was fog at that time? A. Yes.

Q. What kind of fog whistles did you blow?

A. One blast about—well, 3 or 4 blasts a minute; it might have been 3, it might have been less—well, about three, I guess.

Q. 3 or 4 blasts a minute? A. Yes.

Q. What kind of blasts? A. Short blasts.

Q. How long would a blast be?

A. Two seconds or perhaps 3.

Q. Is that what the law required for a fog signal?

A. The law don't require that the blast should be 3 or 4 or 2 seconds; it says a short blast of the steam-whistle.

Q. On this night you say in the usual course of navigating this vessel you left one window open in the pilot-house? [62]

A. In the daytime when it is clear or at night-time when it is clear one window open.

Q. What kind of windows are those?

A. There is three; the pilot-house is 12 feet or something like that square, and there are three windows on the front and three around on the side.

The COURT.—Q. You mean three on each side?

A. Three on each side of it.

Mr. CAMPBELL.—Q. This night you had lowered two windows instead of one? A. Yes.

Q. Were they down the full length?

A. The full length; the center window was closed.

Q. The center window was closed? A. Yes.

Q. You stood on the starboard side? A. Yes.

(Testimony of William H. Higginson.)

Q. Back of the wheel?

A. Between the two wheels.

Q. You stood between the two wheels?

A. There are two wheels, and I stood between them, perhaps $2\frac{1}{2}$ feet from the window.

Q. That is to say, she steers with steam-steering gear or hand steering-gear?

A. Steam steering-gear, and we have a hand-gear to assist us.

Q. That is, in the pilot-house there is a very large wooden wheel? A. Yes.

Q. With spokes on the outside? A. Yes.

Q. Of the same type as vessels' steering-wheels usually are? A. Yes.

Q. There is two of those? A. Two of those.

Q. They are situated about the center of the pilot-house, with respect to the sides? A. Yes.

Q. Nearer the forward end than the after end; is that true? A. About a foot from the window.

Q. The forward wheel is about a foot from the window? A. Yes. [63]

Q. What is the distance between the two wheels?

A. I should judge about $2\frac{1}{2}$ feet.

Q. That is about $2\frac{1}{2}$ feet? A. Yes.

Q. Where is the steam steering-gear?

A. Between the two wheels, about two feet from the window.

Q. You were standing between the two wheels at the steam steering-gear?

A. On the side right by the window, the steering-gear in my hand, a lever.

(Testimony of William H. Higginson.)

Q. That brought you back of the window about 2½ feet? A. Yes.

Q. Where was the compass?

A. Right in front of me, right up against the window, against the pilot-house.

Q. You were steering by the compass?

A. I was looking into it.

Q. You were steering by the compass?

A. Yes.

Q. What kind of a binnacle light did you have?

A. I have got a common oil light on the side.

Q. Throwing the light down on the face of the compass? A. Yes, on the compass.

Q. Your eyes were on this lighted part of the compass? A. Yes.

Q. These big car ferries are very hard to steer, aren't they?

A. They steer pretty good, considering they are large boats; they are slow to swing.

Q. A man has to be on the job all the time?

A. You have got to be on the job, got to watch her, keep her from swinging, especially across the eddies and currents.

Q. The tide was flooding pretty heavily that night? A. A strong flood-tide.

Q. There are a great many eddies in San Francisco Bay? A. Yes.

Q. And particularly as you approach the docks there are eddies? A. Yes. [64]

Q. So that a man who is attempting to steer a vessel, or even you are attempting to steer a vessel

(Testimony of William H. Higginson.)

by the compass, would have to watch pretty closely?

A. Yes.

Q. Otherwise the eddies would catch her and would swing her around in her course? A. Yes.

Q. Now, when you were coming across the bay, you heard a fog bell, didn't you?

A. When I got well over about 22 or 23 minutes—somewhere out there, I heard the fog bell.

Q. That was reported to you by your second officer, you say? A. Yes.

Q. Who reported it to you? Did the first officer?

A. The second officer; he reported it before I picked it up from the pilot-house, and I picked it up afterwards from the pilot-house.

Q. About that moment you saw this light?

A. No, I seen the light—we heard that prior to seeing the light.

Q. You heard this bell prior to seeing the light?

A. Yes.

The COURT.—The bell or the whistle?

A. The bell.

Mr. CAMPBELL.—Q. The bell? A. Yes.

Q. How long after you heard the bell did you see the light?

A. Well, I could not say; it might have been a minute—it might have been two minutes before the light was reported; it might have been perhaps 3 minutes before the light was reported to me. I could not tell exactly; I was not watching the time.

Q. This bell came from a point about ahead, did it not?

(Testimony of William H. Higginson.)

A. Right straight ahead it was reported—bell right straight ahead.

Q. Two or 3 minutes after you heard the bell you picked up this light?

A. They reported a light close aboard.

Q. At that time you knew it was the light of the "Fullerton," did you not? [65]

A. I did not know it was a light, but I thought it was.

Q. You knew where the "Fullerton" was, you expected the "Fullerton" to be right where that light was? A. Yes.

Q. You in your own mind concluded it was the "Fullerton"? A. Yes.

Q. You did not think it was anything else at that time?

A. No, not by the position of the steamer or by the bell ahead.

Q. When you saw this light of the "Fullerton," what was the bearing of your steamer by the compass—did you look at the compass at that time?

A. Heading southwest.

Q. Heading southwest at that time? A. Yes.

Q. Where was the light?

A. It was about, it looked to me about between 2 or 3 points on the port bow, right like that (illustrating).

Q. Your boat isn't sharp at the end? A. No.

Q. It is practically square?

A. Practically square; we get our bearings by looking over the end.

(Testimony of William H. Higginson.)

Mr. CAMPBELL.—Have you a picture of the boat?

Mr. HENGSTLER.—No.

Mr. CAMPBELL.—Q. This light was about over the port corner?

A. Over the port jack-staff; that is how we get our bearings, by the jack-staff.

Q. Where are the jack-staffs?

A. Right on the bow, one on each side.

Q. What do you mean by jack-staffs?

A. Well, a flag-pole; they are 20 feet apart.

Q. They are practically on what you call the forward port corner and the forward starboard corner?

A. Yes.

Q. This light was right over that port jack-staff?

A. Yes.

Q. And when you saw that light you rang full speed ahead? [66]

A. Yes, and put my helm hard-aport.

Q. You threw your helm hard-aport? A. Yes.

Q. What did you do next?

A. Then I stopped her—immediately rang two bells.

Q. Didn't you go under the full speed ahead bell at all? A. No time.

Q. Then you stopped her?

A. When I seen there was no chance to avoid her, I stopped her.

Q. But you did not back here?

A. I had no time to back here. I might kill the men in the engine-room if I did. I was looking out

(Testimony of William H. Higginson.)

for the men in the engine-room. If I had backed and my walking-beam had caught on that, it would have killed the men in the engine-room, sure.

Q. Why is that?

A. Because the walking-beam, going up and down, might have caught in the jib-boom and killed them in the engine-room.

Q. At the time you stopped you were right under her bow? A. Yes.

Q. Where was her bowsprit pointing?

A. She was laying right across like that (illustrating).

Q. Her bow was to the north?

A. To the north; yes.

Q. Whereabouts at the time you stopped her was her bowsprit pointing?

A. Right across the bow, right across my deck.

Q. When you stopped your engine?

A. She had not crossed then but it was close to us.

Q. What you have alleged in your libel is true, isn't it—let me ask you to listen to this, this allegation in your libel, see if it is not true: "that 3 or 5 minutes later the lookouts last above mentioned reported a light upon the port bow of said steamer 'Transit' and close aboard"? A. Yes. [67]

Q. "When her helm was put hard-aport and a signal given to her engineers for full speed ahead, trying to sheer off from any vessel indicated by such light." A. That is right.

Q. "But that it was then too late to avoid collision with the barkentine 'Fullerton' hereinafter described,

(Testimony of William H. Higginson.)

upon which said light was exhibited, the bowsprit thereof being not more than 2 or 3 feet back from the forward pilot-house of the 'Transit.' "

A. I could not tell you at the time the bell struck—when this bell, when this light was reported to me first I looked up from my compass and I saw a light right there. I could not tell how far it was off, and I rang the bell and shoved my helm hard-aport—rang the bell for full speed ahead. Then I looked down again and I seen that the light was too close aboard to avoid it, and I struck the bell to stop. My first officer said at the same time that I struck the bell to "stop her, Captain."

Q. At the time you stopped her, is it not the fact that the bowsprit of the "Fullerton" was practically over your deck?

A. Not at the time my boat was running ahead; at the same time when I struck the bell, it was not over the deck; when I struck the bell to stop it was not over the deck.

Q. How far off was it?

A. There was a dense fog; I could not tell you.

Q. You could not tell? A. No.

Q. At the time you stopped her where was the light on the "Fullerton"?

A. It looked to me close over the jack-staff when I struck the bell.

Q. Over the jack-staff? A. Yes.

Q. When you stopped her what did the flood tide do with your vessel?

A. The flood tide was carrying us on her.

(Testimony of William H. Higginson.)

Q. Which way?

A. It set her on top of the "Fullerton." [68]

Q. Captain, I want you to take these two models and lay them down in the positions in which the two vessels were at the time that you saw the lights of the "Fullerton."

A. Mark this one the "Transit." The "Fullerton" was lying here. I was steering southwest by half south, and I came along here and they reported this light here, and I cannot say how far off my jack-staff it was, but it was on the port bow, and I seen this light on her fore-rigging; her light was about there (pointing). It was back here about in the fore-rigging; it might have been on the top-gallant mast; if it was on the top-gallant one, it would be here, and if it was on the jib-boom it would be here (illustrating). I came along this way, you see.

Q. You did not understand the question. I asked you to take these two models and lay them in the positions the two vessels were when you first saw the light.

A. I should say in that position (illustrating).

Q. Is that correct now?

A. That is what I should say, these positions as near as I can remember them. That is how it looked like to me.

Q. Is this the position of the "Fullerton"?

A. She was lying heading nearly in that position.

The COURT.—He has already said that was the position.

A. To the best of my knowledge, that is the way

(Testimony of William H. Higginson.)

it looked to me.

Mr. CAMPBELL.—Q. Just mark on that the word “Transit,” now mark the position of the flag-staff.

A. There is a lookout here, one man here and one man there.

Q. This is north, is it? A. Yes.

Q. This is south? A. Yes.

Q. Now, how far distant would you judge yourself to be at the time that you saw the “Fullerton’s” light?
[69]

A. Well, the fog was so dense it could not be seen more than a couple of hundred feet anyway. I could not tell you just how far. You can’t gauge the distance in the fog; it is impossible.

Q. I am asking your best judgment.

A. Well, it might have been 200 feet, or it might not have been that much.

Q. It might not have been that far?

A. No, it might not.

Q. It might have been farther?

A. No, you could not have seen it much farther.

Mr. CAMPBELL.—I will ask to have that marked as “Claimant’s Exhibit 3.”

(The document is marked “Claimant’s Exhibit 3.”)

Q. Take the two models and put them in the position of the vessels at the time that you stopped your engine.

A. I stopped my engines at the time that I got in this position. I hung her up almost just instantly;

(Testimony of William H. Higginson.)

it may be 2 seconds or it may not be that much before I stopped her again. All I had time to do was to look up to see her.

Q. How many rudders have you on this boat?

A. One rudder on each end.

Q. A pretty big rudder? A. 12-inch.

Q. In navigating around the wharves in San Francisco where there are so many tide-rips you have to have a pretty heavy rudder to steer with, don't you?

A. Yes.

Q. They answer the rudder quite quickly, do they not?

A. Sometimes they do and sometimes they don't, according to the rip. The "Transit" did not answer her rudder very quickly; she is a boat 335 feet long and of broad beam.

Q. Didn't she respond this night when you threw her helm hard-aport?

A. She didn't have time; there was not time enough between the bells to respond or act. [70]

Q. In your judgment, can't you lay down on the chart here, the position of the two vessels at the time you stopped the "Transit," any different from what you have shown?

A. That is as near as I can come to it. I know when I seen the light it was on the port bow, but I could not tell you the distance because the fog was so dense, and I did not have time to do any signalling or anything else of the kind between the bells.

Q. Had you got your helm hard-aport before you stopped?

(Testimony of William H. Higginson.)

A. Yes, I shoved her over and struck the bell at the same time; swung it over just like that.

Q. How long does it take you to swing your helm hard over?

A. It might take two seconds to roll over, and it might take three, according to the strength of the resistance against it; if the boat was laying still, it would go flying over, if it was going through the water it would go over slowly.

Q. When these ferry-boats approach the slips, the ferry-boats with side wheels, they can run almost into the slip before they have to stop and back?

A. Some of them can.

Q. Is that true of your vessel?

A. No, you have to give her time.

Q. In what distance can you bring your vessel to a stop?

A. Well, from the time I slow, at about three boat-lengths of it, I run her under slow bell one length, and then run her under stop-bell for a couple of hundred feet, and then I go back the whole length of the slip, and go back hard to fully stop.

Q. As you usually run across the bay, in what distance can you bring your vessel to a stop?

A. We do not stop the engine right at the same time. I am answering it to the best of my ability right now. [71]

Q. I am asking you for the distance, how far?

A. Well, we will say between eight and 900 feet.

The COURT.—Do you mean in the case of an emergency where an attempt is made to stop as soon as possible?

(Testimony of William H. Higginson.)

Mr. CAMPBELL.—Yes.

A. Under full speed you can't stop her inside of almost three boat-lengths the way we stop.

Q. Running at 7 miles an hour in what distance can you stop her?

A. That is pretty near full speed,—between 800 and 900 feet, the way we stop in an emergency. If you stopped the engines and tried to back her, she will not; she will jam. We have got to slow the engine first so as to give her time to recover herself; she has low-pressure engines and don't answer very well; she will jam and not back.

Q. This night that you were approaching the San Francisco shore you heard this fog bell?

A. I did, on the slip.

Q. You say it was the slip? A. Yes.

Q. How far off do you usually hear that fog bell?

A. You can hear it 6 or 7 minutes off.

Q. The distance, I mean.

A. The distance, that is,—oh well, half a mile.

Q. It depends upon the density of the fog?

A. Oh, yes.

Q. As a matter of fact, the sounds in the fog are very uncertain? A. That is right.

Q. Sometimes a bell close at hand will sound a long distance off, will it not? A. Yes.

Q. Sometimes a bell a long distance off will sound close? A. If the fog is thin, yes.

Q. So that it is difficult to judge distance by sound in a fog? A. That is right. [72]

Q. Knowing the position that the "Fullerton" was

(Testimony of William H. Higginson.)

anchored in when you left the bay slip at 9:40 as you say, and not hearing her bell when you were coming back on the trip, on the 10:53 trip—

A. (Intg.) I did not hear any.

Q. (Continuing.) Wasn't there any query raised in your mind why that bell was not heard?

A. I thought I was far enough north of it not to hear it.

Q. How far to the north did you think you were?

A. Well, I thought I was far enough to the north to make the slip.

Q. I asked you how far to the north you thought you were. A. I couldn't tell you; I have no idea.

Q. How far do you think?

A. The course I was steering ought to have carried me a quarter of a mile to the north of her.

Q. Didn't you think you could hear the "Fullerton's" bell more than a quarter of a mile?

A. I don't know how far I could hear it.

Q. Didn't you have any idea that night as to how far you could hear the "Fullerton's" bell?

A. I did not. I did not know the density of the fog.

Q. Didn't the fact that you were not able to hear the "Fullerton's" bell raise a suspicion in your mind as to where you were?

A. It raised the suspicion that I was far enough to the north not to hear it.

Q. You did not for a moment suspect you were down in the vicinity of the "Fullerton"?

A. I did not.

(Testimony of William H. Higginson.)

Q. Then your conclusion as to the position in which your vessel was was not based upon the course that you were steering, but was based upon the absence of the bell of the "Fullerton"—you concluded you were to the north of the "Fullerton"?

A. Yes. [73]

Q. Because of the course you were steering or because you did not hear the bell, which?

A. Because of the course I was steering.

Q. Then you concluded you were to the north of the "Fullerton" not because you did not hear it but because of the course you were steering?

A. The course I was steering ought to have carried me clear of her.

Q. You concluded that you were to the north of the "Fullerton"? A. Yes.

Q. Because of the course that you were steering?

A. Yes.

Q. And not because you did not hear the bell?

A. I thought I was far enough to the north not to hear it.

Q. But you found you were mistaken?

A. I found I was mistaken.

Q. So you didn't know exactly the course you were on?

A. I didn't know exactly the course that I was on simply because I did not know quite the strength of the current on account of the fog.

Q. How many years have you been employed in crossing this bay?

A. I have been on the bay on ferry-boats for 33 years.

(Testimony of William H. Higginson.)

Q. In that time you have acquired a pretty accurate idea of tidal and current conditions in San Francisco Bay, have you not? A. Yes.

Q. How many times do you suppose you have passed in and out of Mission Bay Slip—how many times do you think you have passed in and out of Mission Bay Slip between September 20, 1909, and December 13, 1909?

A. Well, I passed in and out of that 3 or 4 times every other day, sometimes more; sometimes six trips in there in a watch.

Q. Will you indicate on the paper here the position of the two vessels after they came together?

A. They came together like that; that is, when I got on the [74] deck they were lying in that position, and they were working ahead.

Q. Put them in the position.

A. That is as near as I can make it. I got a line from my bow here to this bow here, and the first officer gave an order to put a line from here to some where around here, to hold them in position and to keep them close together.

Q. That is about the position?

A. Yes, that is as near as I can make out.

Mr. CAMPBELL.—I will offer that in evidence.

(The paper is marked "Claimant's Exhibit 4.")

Q. Mark on the "Transit" the position of your pilot-house. A. There, 100 feet from the end.

Q. Whereabouts is your smokestack?

A. I should judge about there, near about the center.

(Testimony of William H. Higginson.)

Q. A circle? A. Yes.

Q. Where is your after pilot-house?

A. It is on the other end.

Q. Where are your walking-beams?

A. It is right there.

Q. Mark them. A. Yes.

Q. Now, as a matter of fact, the bowsprit of the "Fullerton" carried out your smokestack, didn't it?

A. Yes.

Q. Is this the position of that?

A. This is the position when I got down on the deck; afterwards the smokestack was carried away by the vessels forging ahead and swinging.

Q. Show me on the next drawing the position in which they forged ahead.

A. They were forging ahead like this; they forged ahead in this way (illustrating).

Q. As a matter of fact, didn't they come around almost parallel? A. No. [75]

Q. In what position did they finally rest?

A. They rested in that position; it was just like that; there were lines from this bow and another line from this bow; the "Fullerton" took a line.

Q. Where was the bowsprit of the "Fullerton" with respect to your smokestack?

A. Right across the deck, just abaft the smokestack. That was where the bowsprit was, abaft the smokestack, that is where it stood. I have got no measurements for this, only am telling you how it looks to me.

Q. Would that be the position of the smokestack?

(Testimony of William H. Higginson.)

A. The smokestack would be about there.

Mr. CAMPBELL.—I offer that in evidence.

(The paper is marked “Claimant’s Exhibit 5.”)

Redirect Examination.

Mr. HENGSTLER.—Q. Captain Higginson, you did not intend to convey the impression, did you, that you kept five lookouts on the “Transit” at all times?

A. In foggy weather.

Q. You meant that? A. In foggy weather.

Q. In the kind of weather that existed that night?

A. The men all go forward, all the crew that are not occupied in other places.

Q. So the reason why you put so many lookouts in the bow of your vessel was the foggy weather, the thick fog?

A. The dense fog; yes. In case one man might hear something or see something more than the other.

Q. You spoke once or twice about a bell that you heard straight ahead; when you spoke of that you referred to the slip-bell?

A. Yes, on the pier-head.

Q. When you first perceived the light of the “Fullerton,” Captain, [76] how much time elapsed from the moment when you first perceived the light to the time when the vessels came together, in your opinion, generally?

A. It might have been 20 seconds; it might have been 30 seconds. It was a very short time, I know; that is all.

Q. At that time the vessels were very close together?

(Testimony of William H. Higginson.)

A. At that time they were so close together that there was no time to do anything only to stop the engines.

Q. Can you now, when you look back upon it, think of any maneuver that you could have made between the time when you saw the light and the time of the collision that you could have *been* made that would have saved the collision, saved the vessels from coming together?

A. No, there was nothing; they were too close together. There was not distance to do anything; there was not time to even back the engines without endangering the lives of the engineers.

Q. If the engines had been reversed would that have made any difference?

A. Not a particle. I don't believe they would have reversed; they might have.

Q. Now, Captain, when you drew these diagrams here, you did not want to commit yourself that that was the exact position of the vessels at any particular time?

A. No, I said as near as I could. It was a dense fog, and that is as near as it looks to me.

Q. Captain, if there had been any wind that night you would have known about it, would you?

A. Yes.

Q. Even if it had been a head wind you would know of it?

A. The wind would have kept the fog moving.

Q. Can you tell positively from what you perceived when you left and when you came on this side and

(Testimony of William H. Higginson.)

while you were in the pilot-house that there was no wind blowing that night? [77]

A. I know that there was no wind blowing when we left the slip at Oakland Pier, when we were lying still there; that was the only chance to find out if there was any wind or not; the fog drifted, it did not blow at all; it drifted down in a hurry.

Mr. FOULDS.—Q. Captain, you have testified a moment ago that you felt no wind whatever in the pilot-house. Do you mean no wind beyond the wind that you ordinarily feel from the motion of the ship, or no wind whatever?

A. There was no wind that I know of any more than what we created ourselves, which we do. We create a wind more or less all the time; whether there is any wind or not we create a wind. I don't think there was a wind blowing one way or the other either ahead of us or behind us, or anything of that kind.

Q. If you felt any wind, then, it was wind that was created by your motion?

A. Yes, that is what I calculate it was.

Q. Did you feel such a wind? A. No.

Q. Did you feel any wind that would have been created by your own motion?

A. I felt a little wind, that is what I mean. I just felt a draught of the air, that is all, no wind. The draught of the air, there is just a little draught always when there is two windows open, a draught circulating through the pilot-house.

Mr. HENGSTLER.—Q. Do you ever open the side windows of the pilot-house? A. Yes.

(Testimony of William H. Higginson.)

Q. When do you open those?

A. We open those when the wind is blowing. When there is no wind we close it because we can get the sounds inside the pilot-house better.

Q. That night you had them closed?

A. That night we had them closed because the sound comes better to us. If the side window is open it creates a wind, a draught. I would like to state that sometimes we open and close these windows two or three [78] times on a passage, for the special purpose of finding out how the wind is, how the draught is carrying.

Q. This bell that you heard, how did you know that was not the bell on the "Fullerton"?

A. Well, the "Fullerton's" ship-bell, according to the law, is rung in that manner (illustrating). Our bell rings like a locomotive bell.

Q. You mean the slip-bell?

A. The slip-bell; we can tell the different sounds of the bells.

Q. In characterizing this ship's bell, it has a quick, jerky motion?

A. Yes. In a fog it is supposed to ring for 5 seconds—more than that. A ship's bell is entirely different, a ship at anchor, the bell is different from any other bell.

Mr. CAMPBELL.—Q. Your vessel has a whistle that sounds something like a locomotive, you say?

A. Well, it is a hoarse whistle.

Q. In what sort of box is this bell on the dock inclosed?

(Testimony of William H. Higginson.)

A. It is inclosed in the rear and open in the front, a sounding-board behind it.

Q. A sounding-board with a flare-out, isn't it?

A. Yes, a flare-out.

Q. That flare-out points toward the Oakland mole?

A. It points right out from the slip; if you are either side of it you can't hear it very well; if you are right in front of it you can get the sound.

Q. That flare-out is toward the Oakland mole, isn't it?

A. It is right out from the end of the slip; it stands right up from the end of the slip.

Mr. HENGSTLER.—Q. Toward the Oakland mole?

A. No, not towards the Oakland mole, but it flares right out in front of the slip.

Mr. CAMPBELL.—Q. Doesn't it flare out parallel with the fairway [79] you are running on?

A. Not parallel, no, 'because we don't run altogether parallel; we have got to run with the tide; it would not do to have that bell parallel; if there was a flood tide, we would have to be more to the northward, and if an ebb tide to the southward, 2 points to 2½ points difference in our course. This course I am steering on, I have steered for over 10 years, the same course.

Q. As I understand it, you were blowing your whistle repeatedly, short blasts several times a minute?

A. Not several times; perhaps three times; we didn't figure on the minute, we were just blowing

(Testimony of William H. Higginson.)

them 25 to 30 seconds apart. I have got the man that blew the whistles; he will testify as to how he did blow them.

Q. I am asking you.

A. I am telling you 25 to 30 seconds apart.

Q. I thought you said 3 or 4 times a minute?

A. I might have said 3 or 4 times a minute; it might have been 3 or 4 times; that would be every 15 seconds—it might have been blown every 25 seconds.

Mr. HENGSTLER.—Q. How long did you say that the blasts are, Captain?

A. Between 2 and 3 seconds, the toot.

Q. It might be more than that?

A. No, very seldom, because our passing signals are longer signals.

[Testimony of Ernest D. Reichelt, for Libelant.]

ERNEST D. REICHELT, called for the libelant, sworn.

Mr. FOULDS.—Q. What is your age, Mr. Reichelt? A. 62.

Q. What is your employment?

A. I am first officer.

Q. On what steamer?

A. The steamer "Transit," belonging to the Southern Pacific Company.

Q. How long have you held that position?

A. Between 6 and 7 years. [80]

Q. Where were you on board the "Transit" on the 15th of December, 1909, on the trip shown in the log-book to have left Oakland Pier at 10:53 P. M.?

(Testimony of Ernest D. Reichelt.)

A. I was in the pilot-house, on the port side of the steering-gear.

Q. In what capacity were you acting?

A. As lookout, for any strange sound, occurrences or anything that should be in our fair way. I was listening for any kind of a noise. I had the window down and was leaning out of the window.

Q. Which window were you leaning out of?

A. On the left-hand side, the port side.

Q. Was it the side window or the front window?

A. No, the front window.

Q. Who was in charge of the ship at that time, in charge of the helm?

A. Captain Higginson; he was in charge at the wheel.

Q. Was there a lookout on the bow of the ship?

A. Yes, there was.

Q. Was the night clear or foggy?

A. It was very foggy, a dense fog. It was clear in the fore part of the night.

Q. But at all times during this trip that you left Oakland Pier at 10:53, at what speed had the vessel come?

A. We went ahead under a slow bell, half speed.

Q. Who was in the pilot-house besides yourself and the captain?

A. There was an apprentice pilot, Raymond Fahrenholtz, what you call the pilot-house man.

Q. What was his duty?

A. He was blowing the fog signals, the fog whistles.

(Testimony of Ernest D. Reichelt.)

Q. Who was on the lookout?

A. There were four deck-hands and the second officer—with the second officer.

Q. What positions were they in on the boat, in a general way?

A. Well, as a general rule, on a freight-boat or even on a passenger-boat [81] the lookouts are distributed half on the port side and half on the star-board side, and the officer of the deck is in the middle; that is, in case of any noise or any signals that he might hear, that he will report to the second officer and he will report to the pilot-house.

Q. Was that on the stern or the bow?

A. It is on the bow.

Q. What was the destination of the ship on that trip?

A. Going from Oakland Pier over to Mission Bay, the foot of 16th Street.

Q. Did you hear the fog whistle on the "Transit" on your own ship?

A. Yes, it was blowing every 30 or 40 seconds.

Q. Was that kept up constantly all the time?

A. All the way until we got in the collision with the "Fullerton."

Q. Was there any other ship reported in close proximity—was the sound of any other ship heard at close proximity?

A. Yes; about 2 or 3 minutes after we had started from Oakland we heard the sound of a steamer apparently crossing our bow, coming from Alameda mole crossing towards the city. He was blowing his

(Testimony of Ernest D. Reichelt.)

fog whistle and also the leaving whistle when he left the Alameda mole.

Q. What was the first indication on that trip that the vessel was nearing the San Francisco shore?

A. The sound of the slip-bell at the foot of 16th Street; that was the first indication that we were nearing the shore.

Q. Did you hear that yourself?

A. Yes, I did.

Q. Did you hear it distinctly?

A. Distinctly; yes.

Q. Were you familiar with that bell?

A. Very familiar with it.

Q. Was there any doubt in your mind as to what bell it was? A. No; no doubt whatsoever. [82]

Q. I presume you recognized it as the slip-bell; is that correct? A. Yes, I did.

Q. After that what happened?

A. It was only just about 2 or 3 minutes after that we heard the sound of the slip-bell that we located, our second officer reported a bright light on our port bow right on board, and immediately after the report was given I could see the bright light almost with the level of the pilot-house, about 3 or 4 points on my port bow. I was on the port side, it was nearest to me, and almost on the level with the pilot-house windows.

Q. How near was it in a general way?

A. Well, that is pretty hard to tell how near it was, but the distance was very short—I should say about 150 feet, maybe a little more, and it might be a

(Testimony of Ernest D. Reichelt.)

little less; it is a pretty hard thing in a fog, in a dense fog like that, to gauge the distance within a few feet.

Q. What signal was given to the engineer? Did you observe what signal was given to the engine-room?

A. Yes, I did. He was given the jingle-bell.

Q. Then what next?

A. The captain, he put his helm hard-aport and gave them the jingle-bell, and in the meantime when he gave them the jingle-bell, I seen the bowsprit of the "Fullerton" coming right for the pilot-house, and I told the captain, I said, "For God's sake, stop your engines entirely." We were right square across the "Fullerton's" bow, or the vessel's bow. I didn't say the "Fullerton's" bow, but the vessel's bow, and he gave them two bells in the engine-room; that means for to say to stop. Then the time was so short that I don't think the engineer had time to give half a turn or quarter of a turn on the engines.

Q. How did the ships come together?

A. The "Transit" went right across the "Fullerton's" bow, right [83] under the guard until she was pretty near amidships. Her bowsprit scraped over the whistle-wire that leads from the pilot-house to the funnel, and barely missed the front of the pilot-house where the three of us was in, the Captain, myself and the apprentice pilot.

Q. Right after you heard the Mission Slip bell did you listen for any other bell?

A. We always do in foggy weather; listen for any

(Testimony of Ernest D. Reichelt.)

noise, listen for any bells, fog-horn or whistle.

Q. You knew it in a general way, where the "Fullerton" was, didn't you?

A. We knew the "Fullerton" had been in the fairway or near the fairway, in a dangerous position in foggy weather.

Mr. CAMPBELL.—We move to strike out the conclusion of the witness. That is a question of law for the Court to determine.

The COURT.—You mean his statement about it was in a dangerous position?

Mr. CAMPBELL.—Yes.

The COURT.—It is allowed.

Mr. FOULDS.—We note an exception.

Q. What did you know about the position of the Fullerton with reference to your course?

A. Well, she was laying almost parallel with our slip, from our slip.

Q. What do you mean by parallel from your slip?

A. Well, right in front of our slip.

Q. Had you observed that she was near your usual course? A. How is that?

Q. Had you observed that she was near the usual course of the "Transit"?

A. Well, she had been in that position for 3 or 4 days probably.

Q. Did you hear any sound then from the "Fullerton" before the collision occurred?

A. No, I did not. [84]

Q. Did you hear any other bell except the Mission Slip bell?

(Testimony of Ernest D. Reichelt.)

A. Only the Mission Slip bell, that is all.

Q. You were listening particularly for the "Fullerton"?

A. No, I did not, I listened for any sound, what there might be coming from her or from any passing vessel or any vessel in our vicinity.

Q. After the vessels collided, what action did you take, what did you do?

A. I gave orders for to pass lines on to the "Fullerton" and secure her in the position she was in.

Q. When was the first time you heard the bell from the "Fullerton"?

A. After we had the lines out and we rang our own bell, she rang her bell, after she was secured.

Q. How long after the collision was it that they rang the bell for the first time?

A. How long after the collision?

Q. How long after the collision did they ring the "Fullerton's" bell for the first time?

A. After we rung our own, it might have been probably after the line was out, the bow-line and the stern-line—well, 4 or 5 minutes.

Q. What did you do after the collision?

A. We lowered a small boat, and I was sent ashore with four men in it and a compass to call for assistance for to clear the "Transit" from the "Fullerton."

Q. You went ashore, did you? A. Yes. I did.

Q. What did you do?

A. I went up to the office on the Mission Bay side and reported the accident to the officials there and asked them for to telegraph over to Oakland to send

(Testimony of Ernest D. Reichelt.)

a tow-boat, the "Ajax," over to assist us to get clear of the "Fullerton."

Q. What did you do next?

A. Afterwards I went back again on the "Transit," or on my way back I was trying to join my ship again, my boat. [85]

Q. Did you find the "Transit" and the "Fullerton" where you expected to find them?

A. No, I did not find them where I expected to find them. I thought I was sure of the course where I would most likely expect to find them, where I thought they were.

Q. I suppose you went to the position you left them the night before? A. Yes.

Mr. CAMPBELL.—Let him state what he did and not what you suggest.

Mr. FOULDS.—Q. Where did you find the ships?

A. I found them away to the southward, off the Sugar Refinery.

Q. How did you know they were down to the southward?

A. They could not be any other way, because the "Transit" was across the "Fullerton's" bow having the full force of the flood tide; there was a strong flood tide, and both vessels could not very well go against the tide; they had to go with the tide.

Q. Was there anything to guide you to the ships after you got to the position of the night before?

A. I had the compass in the boat with me.

Q. You got to the position of the night before and you saw the ships were not there; you knew they

(Testimony of Ernest D. Reichelt.)

must have gone south. Was there anything to guide you to the ships? Did you hear any sound from the ships?

A. Yes. I knew, I went a little to the southward because I knew they had been drifting to the southward; they could not go anywhere else, being bound together and only one anchor down that the "Fullerton" had; so I held her down to the south, south southeast by my course, that goes right up the bay, and after I maintained it a short while I heard the two bells distinctly, the "Transit's" bell and the "Fullerton's" bell, both of them was ringing, and that guided me back to the boat.

Q. Had you heard the "Fullerton's" bell at any time before that? A. No. [86]

Q. That was the first time?

A. That was the first time.

Q. What did you do next after you located where the ships were, in a general way?

A. I went back on board of my own boat again.

Q. How far was that?

A. Well, I should judge off the Western Sugar Refinery, the distance from where she was lying must be close up to half a mile; it might not be quite so far.

Q. You are sure that you heard the "Fullerton's" bell from the position that the ships were the night before? A. Yes.

Q. Could you hear the bell from the "Fullerton" while you were on shore? A. No, I could not.

Mr. CAMPBELL.—Q. Did I understand you to say you could hear the "Fullerton's" bell in the posi-

(Testimony of Ernest D. Reichelt.)

tion in which the vessels were the night before?

A. No.

Mr. FOULDS.—Q. In the position where the ships were the night before you could not hear the bells?

A. No.

Q. The next morning when you went back and got to the position the ships were when they collideded, you could hear the bell of the "Fullerton" in a new position? A. I heard the two bells.

The COURT.—I did not understand the witness to mean to say that he went back to the exact spot where the collision took place; he said he steered a different direction, knowing that they would drift.

Mr. CAMPBELL.—South southeast; that is what I understood.

Mr. FOULDS.—I misunderstood him, then.

Q. What distance were you from the vessels when you first heard the bell of the "Fullerton" when you got back the next morning?

A. As I told you before, it must have been pretty near half a mile. I could not make much headway in a small boat in 2 or 3 minutes' pulling in that direction where the sounds of the bell were.

(A recess was here taken until 2 P. M.) [87]

AFTERNOON SESSION.

ERNEST D. REICHELT, cross-examination.

Mr. CAMPBELL.—Q. Mr. Reichelt, what do you mean by an apprentice pilot?

A. An apprentice pilot is a man that is learning the business, a young man that is learning to be a navigator in a steamboat.

(Testimony of Ernest D. Reichelt.)

Q. Who told this young man to blow the fog-whistle of the "Transit"?

A. The captain and myself.

Q. Every time he blew a blast on the fog-whistle would you tell him to blow it?

A. No; he knows that himself.

Q. He was doing that of his own initiative?

A. Yes.

Q. And he blew it when he wanted to and as often as he wanted to? A. No.

Q. Who told him how often to blow it?

A. Whenever I thought, you know, or the captain thought that it would be more than 30 or 40 seconds, or something near a minute, he would tell him, "Blow your whistle," or I would tell him.

Q. So that you and the captain in the pilot-house were from time to time telling this young man when to blow the fog-whistle?

A. Not exactly all the time.

Q. I mean from time to time you were?

A. Yes.

Q. Both you and the captain? A. Yes.

Q. Who handled the bells to the engine-room?

A. The captain himself.

Q. When the captain rang the bell to stop the engine, that was after you had told him to stop?

A. Yes.

Q. You told the captain to stop? A. Yes.

Q. Then the captain stopped?

A. He stopped; yes. [88]

Q. And at that time the bowsprit of the "Fuller-

(Testimony of Ernest D. Reichelt.)

ton'' was pointing right towards your pilot-house?

A. Yes.

Q. The "Fullerton" was heading—how was the tide running?

A. The tide that was running was a flood tide from south southeast and north northwest—that is, the upper side points.

Q. Just take my pencil on this Claimant's Exhibit 2 and show me with an arrow which way the tide was running opposite the 16th Street dock.

A. This is the 16th Street dock.

Q. You are referring to the point marked "A"?

A. The tide was running this way.

Q. This is the land here, and this is the bay at your right? A. This is the bay here.

Q. You see these are the forbidden anchorages; here is Mission Rock. I want you to show me off the San Francisco docks the direction in which the tide was flowing.

A. Right along the shore here.

Q. You are away over on the Oakland side; this is the San Francisco side on the left? A. Yes.

Q. Now I want you to show me off the docks from the San Francisco side the direction in which the tide was flowing.

A. Here is San Francisco here.

Q. Maybe the larger chart will help you better; that is plainer to you?

A. Yes; it was running in this direction (illustrating).

Q. I want it down near the San Francisco side

(Testimony of Ernest D. Reichelt.)

here; you are off Alcatraz Island there.

A. Say from Goat Island in this direction.

Q. Just draw a long line through there to show the direction. We will mark that line "X-Y." That is to say, when the tide was flooding as it was that night.

A. Yes, that night. [89]

Q. The tide was practically running parallel with the San Francisco shore line? A. Yes.

Q. A vessel at anchor as the "Fullerton" was in that tide would have her bow pointing practically into the tide, wouldn't she? A. Yes.

Q. So that the "Fullerton" lying at anchor would be practically in a line parallel with the line that you have drawn there at X-Y? A. Exactly so.

Q. As I understood you to say, it was the rule on that car ferry to maintain five lookouts forward, the second officer and four men forward as lookouts.

A. That has always been the rule on them boats, on the freight-boat, everyone on the lookout.

Q. Have everyone on the lookout?

A. Everyone on the lookout on the boat, ever since I have been on the boat.

Q. That is, you mean by that that all of the crew who were not either in the pilot-house or the engine-room or the fire-room were on the forward part of the vessel as lookouts?

A. No, except the fire-room; they are not included. The engineer and fire department are not included on the lookout.

Q. But I say everybody else, all the rest of the crew? A. All the rest of the crew.

(Testimony of Ernest D. Reichelt.)

Q. Except the engine-room crew and those in the pilot-house are customarily stationed on the forward part of the vessel as lookouts? A. Yes.

Q. Have you ever been to sea in freight vessels?

A. Yes, I have.

Q. In what way?

A. In mostly sailing vessels.

Q. How many men is it customary to have on the lookout on sailing vessels? A. Only one.

Q. How many is it customary, if you know, on ocean-going steamships? [90]

A. On ocean-going steamships, as a general rule, in most of them or 90 per cent of them, they will have two lookouts.

Q. Two lookouts?

A. Two lookouts; one on the starboard and one on the port, that is to say, from the deck crew; also besides they have a quartermaster.

Q. The quartermaster is at the wheel, isn't he?

A. Not always.

Q. Where would he be stationed,—on the bridge with the master? A. Yes, very often.

Q. You do not call a man on the bridge a lookout, do you? A. No.

Q. You call a man who is stationed in the forward part of the vessel near the eyes a lookout?

A. Yes, that is right.

Q. It is customary to have two on those ocean-going steamers? A. Yes.

Q. What is your reason for maintaining five on board of this vessel?

(Testimony of Ernest D. Reichelt.)

A. Well, it was a rule, and we followed nothing else but the rule.

Q. Isn't the reason because of the noise that the paddle-wheels make, making it difficult to hear?

A. Well, as long as the boat isn't going very fast through the water, there isn't much chance to make no noise, you know.

Q. Going back to the question, isn't it a fact that in that particular vessel that these paddle-wheels make a great deal of noise and that is why you maintain the extra number on the lookout forward?

A. Well, I don't think that the "Transit" makes so much noise with her paddle-wheels.

Q. It makes considerable noise, don't it?

A. It makes a little noise; every boat makes noise, is bound to make a little noise.

Q. Was that the reason you took the extra precaution of having [91] so many men on the lookout?

A. It is because it is the rule.

Q. What is the reason for the rule on that vessel and not on other vessels—what was the reason for the rule on that vessel and not on other vessels?

A. Well, it is because it is on all vessels, on all freight-boats.

Q. What do you mean by all freight-boats?

A. What belong to the Southern Pacific Company.

Q. What are their names?

A. There is the "Car Float No. 2," and there is the "Solano," and there are other boats that go up the Sacramento that I don't know. I have never been in them.

(Testimony of Ernest D. Reichelt.)

Q. The "Solano" is a car ferry up at Port Costa?

A. Yes; they are also on the "El Capitan" the Vallejo Junction boat.

Q. They maintain five lookouts forward?

A. Just as many men as they can spare.

Q. All side-wheel steamers?

A. Yes, with the exception of "Car Float No. 2"; she is a stern-wheeler.

Q. What is the name of that boat?

A. "Car Float No. 2."

Q. Where is the pilot-house located on "Car Float No. 2"?

A. About 30 or 40 feet,—30 feet, I might say, from the bow—30 or 40 feet, somewhere around there.

Q. What course were you steering that night?

A. That I don't know, because I was not handling the wheel.

Q. After the collision you left and went ashore?

A. Yes.

Q. How long after the collision did you do that?

A. I went immediately, just as soon as we had the bow line and the stern line fast to the "Fullerton" to hold her in the position she was in.

Q. That took you some time, did it not, to get those lines out?

A. No, it did not take a great while, because the line is always handy, laying there on them boats, especially on the "Transit." [92]

Q. How long, in your judgment, would you say that it was between the time of the collision and the time that you were ready to go ashore?

(Testimony of Ernest D. Reichelt.)

A. About 10 minutes; somewhere around there.

Q. About 10 minutes?

A. About 10 minutes after the collision.

Q. How did you go ashore?

A. I went ashore in the small boat, the ship's boat.

Q. A rowboat? A. Yes.

Q. How many men did you take with you?

A. Four; three to row and one to steer—steer by the compass according to my direction.

Q. What was the compass course that you steered?

A. Southwest.

Q. You steered southwest? A. Yes.

Q. What is that—magnetic?

A. Magnetic compass.

Q. Whereabouts did you fetch up?

A. Fetched up on the oil wharf; that is, the second wharf above our slip.

Q. Above your slip? A. Yes.

Q. To the northward? A. To the southward.

Q. Where was that with respect to the 16th Street dock? A. Here is the slip (pointing).

Q. Mark it on this other chart. That is the one next to your ferry slip, the block marked below A?

Mr. HENGSTLER.—Here is the ferry slip, A.

A. Here is the ferry slip (pointing).

Mr. CAMPBELL.—Q. At the 16th Street wharf?

A. Here is the ferry; then comes the lumber company's wharf, and then is the oil wharf. There is the bay going to the Union Iron Works.

Q. Where does the south end of the forbidden anchorage extend from?

(Testimony of Ernest D. Reichelt.)

A. As far as I understand, it extended right from the lumber wharf—up from the oil wharf.

Q. You take this pencil and mark where this oil wharf was. [93]

A. There is the slip, there is the lumber wharf, and here is the oil wharf.

Q. The point marked oil wharf, how far was that oil wharf from your slip? A. About 200 feet.

Q. About 200 feet?

A. Or 250, somewhere around there.

Q. Who steered the boat,—did you, the rowboat?

A. No; the apprentice pilot by the name of Fahrenholtz.

Q. Did you watch the compass?

A. Yes, the compass was on the front of me.

Q. In going from the “Fullerton” to this slip you consider you steered a southwest course?

A. Southwest.

Q. Did they always hold her on a southwest course?

A. As near as we could; yes.

Q. What time did you go back to the vessel?

A. It was somewhere around one o'clock.

Q. About one o'clock? A. Yes.

Q. Where did you leave from, the oil dock?

A. The oil works, yes.

Q. You steered how?

A. I steered north by east.

Q. North by east? A. Yes.

Q. Magnetic, of course? A. Yes.

Q. How fast was the tide running at that time?

Mr. HENGSTLER.—What time?

(Testimony of Ernest D. Reichelt.)

Mr. CAMPBELL.—Q. At the time of the collision, I am speaking of.

Mr. HENGSTLER.—At the time of the collision—you were speaking of one o'clock in the morning.

Mr. CAMPBELL.—Q. I mean at the time of the collision.

A. Well, I should judge the tide was pretty strong, at that time.

Q. What is your best judgment?

A. About 6 miles; about 5 or [94] 6 miles; somewhere around there.

Q. How long did it take you to row ashore from the "Transit"?

A. Eight minutes or nine minutes from the "Transit."

Q. What time was it that you left the "Transit," what time did you leave?

A. Somewhere about a quarter to twelve.

Q. Did you look at your watch to see, or is that simply an approximation?

A. I looked at my watch going ashore.

Q. Do you remember now the exact time that you left and the exact time that you reached the dock?

A. No; that is just within my memory now.

Q. How did you happen to *take* the time how long it took you to go from the ship to the shore?

A. Because I know the running time of the boat, how long it took her before we was in line with the "Fullerton."

Q. At the time of this collision you had in mind pretty well the length of time that you had been run-

(Testimony of Ernest D. Reichelt.)

ning from the Oakland long wharf, did you not?

A. Yes, pretty near.

Q. You had seen the "Fullerton" anchored off the Mission Bay Slip or the 16th Street dock when you had gone to Oakland on the 9:40 trip, hadn't you?

A. Yes.

Q. So that when you left the Oakland Pier on this 10:53 trip you had in mind the location of the "Fullerton" with respect to your ferry slip, didn't you?

A. Pretty near it, yes.

Q. You had that mental picture as to where she was? A. Certainly.

Q. When this light came up out of the fog you knew pretty close where you were, didn't you—at least where you thought you were?

A. I did not know, because I was not handling the wheel. I was not handling the boat.

Q. Hadn't you been watching the compass course at all? A. No, I had not. [95]

Q. Was there anything that indicated to your mind that your vessel was running on a different course during all of the time, anything whatever to manifest that she had been running a different course?

A. No, I left it to the captain to steer.

Q. As you approached the time when you first saw the light of the "Fullerton" you knew pretty well about where you were, didn't you?

A. Well, yes, pretty near.

Q. Wasn't there any apprehension on your part of your not hearing the "Fullerton's" bell?

A. Well, no, there was not.

(Testimony of Ernest D. Reichelt.)

Q. The fact that you did not hear that bell and knew that vessel was in that vicinity, didn't it make you suspicious that you might be off your course?

A. No, I thought the road was clear, as long as we didn't hear any bell.

Q. What did you think had become of the "Fullerton"?

A. Well, that he was anchored far enough from us that she would not ring any bell.

Q. Is it customary aboard anchored vessels not to ring a bell except when other vessels are coming towards them?

A. When a vessel is approaching a vessel that is laying at anchor you always go to work and ring the bell.

Q. Doesn't the law require the ringing of the fog-bell at all times whether you hear another vessel or not in the fog?

A. It is, but it is very seldom carried out; they are not very often near where this boat was anchored; they are where there is no vessels coming.

Q. Didn't you wonder in your own mind whether or not you were getting close to the "Fullerton" before you saw the light?

A. Well, I couldn't say exactly that.

Q. Didn't you wonder why the "Fullerton's" bell was not ringing? [96]

A. I was wondering, yes, or some other vessels that were around there. I didn't hear no other bell.

Q. What other vessels were anchored in that vicinity?

(Testimony of Ernest D. Reichelt.)

A. There was a transport, I have forgotten her name; that slipped out of my memory; she was lying to the southward of us.

Q. Do you know the steamer "Lansing"?

A. Yes, I have seen her on different occasions.

Q. She was anchored right astern of the "Fullerton," was she not?

A. That I don't know. I can't remember any more.

Q. When you rowed in from the "Transit" to the dock, didn't you pass barges anchored between the "Fullerton" and the slip? A. Yes, lumber barges.

Q. It never occurred to you to stop the "Transit" and listen for the "Fullerton's" bell when you got down in the vicinity of where you expected to find her, did it?

A. Well, no, it was not in my mind, because I was not navigating the boat.

Q. The captain made no suggestion of that to you at all? A. He did not.

Q. He was busy steering with the compass?

A. Yes, steering the boat.

Q. Where is the Western Sugar Refineries that you speak of?

A. It is about half a mile to the southward from our slip, pretty near half a mile.

Q. Whereabouts is it with reference to the Union Iron Works?

A. It is further to the southward than the Union Iron Works.

Q. Further to the southerly than the Union Iron

(Testimony of Ernest D. Reichelt.)

Works? A. Yes.

Q. You say that the next morning that the "Transit" was anchored, or that the "Fullerton" was anchored off the Western Sugar Refineries?

A. I found her there after I came back with a small boat, after I went for assistance. [97]

Q. You found her anchored off the Sugar Refinery?

A. Pretty near off the Western Sugar Refinery.

Q. So that you had to row from this oil dock down past the Union Iron Works?

A. No, I went out first to the place where the collision occurred, or I thought pretty near where it occurred.

Q. I thought you told the Court this morning that when you went ashore that you thought that these vessels would drag their anchors and that when you left the oil dock that you steered a south southeast course. A. No, I beg your pardon.

Q. When was it you steered the south southeast course?

A. After I found out that the vessels were not there in the place where the collision occurred, and I thought they would have to drift to the southward; it could not be any other way.

Q. How long was it from the time you left the oil dock until you got back aboard your boat?

A. About 20 minutes; somewhere around there.

Q. Twenty minutes? A. About that; yes.

Q. You first rowed out to where the collision had taken place? A. Yes.

(Testimony of Ernest D. Reichelt.)

Q. That was on a north by east course? A. Yes.

Q. From that point you rowed south southeast?

A. South southeast; yes.

Q. Did you see the anchor lights of the "Sonoma" or the "Ventura" that night? A. No, I did not.

Q. Did you hear their bells? A. No.

Q. Did you know that they were anchored in that vicinity?

A. I know that they were to the southward of our slip; yes.

Q. You know, as a matter of fact, they were off the Union Iron Works, don't you?

A. Somewhere around in that neighborhood [98] either off the Union Iron Works or the Risdon Iron Works.

Q. Do you mean to say now that the "Fullerton" and the "Transit" dragged their anchors until they dragged to where the "Sonoma" and "Ventura" were anchored off the Union Iron Works?

A. Yes.

Q. Did you see the "Lansing" as you went down that night? A. No, I did not.

Q. Where were these barges anchored with respect to the Ferry slip?

A. Between the oil wharf and the Risdon Iron Works.

Q. Weren't they anchored between the "Fullerton" and the oil wharf? A. Yes.

Q. Then it was not the Risdon Iron Works and the oil works, was it?

A. Well, I mean to say in between the land, you know.

(Testimony of Ernest D. Reichelt.)

Q. The Risdon is to the southward of the Union Iron Works? A. Yes.

Q. Were these barges anchored between the oil wharf and the Risdon Iron Works, or were they anchored between the oil works and where the "Fullerton" and "Transit" came into collision?

A. Them barges was anchored between the shore; between the oil wharf and the Risdon, as near as I can come to it; there was not one, but there was probably 3 or 4. I don't remember how many; I didn't count them.

Q. Didn't you pass them in going in from the "Fullerton"? A. Did I pass one?

Q. Did you pass them in going in from the "Fullerton" to the oil dock?

A. Yes, I passed one of them in the fog.

Redirect Examination.

Mr. HENGSTLER.—Mr. Reichelt, you stated that there was a rule of the Southern Pacific Company with relation to your ferry-boats to have 5 lookouts. You mean in a fog, do [99] you not? You do not always have 5 lookouts, do you?

A. No, in clear weather we only have one.

Q. But this rule that you speak of that was in answer to Mr. Campbell's questions applies only to foggy weather, does it not? A. That is all.

Q. Was that rule in existence at the time when you entered the employment of the Southern Pacific? A. Yes.

Q. Do you know what the reasons for that rule are? A. I could not tell you.

(Testimony of Ernest D. Reichelt.)

Q. In your opinion, if you had been on the bow of the "Transit" that night when it approached the "Fullerton" and the "Fullerton" had struck her bells, would you have heard them? Would you have heard the bells? A. Most undoubtedly.

Q. Would you have heard them from the place where you were in the pilot-house if they had been struck? A. Yes.

Q. You were hanging out of the window there and looking about, were you not? A. Yes.

Q. And you were listening for bells? A. Yes.

The COURT.—He has been over that once; he has so stated.

A. I was listening for bells and whistles and any noises that might be made, different things in foggy weather.

Mr. HENGSTLER.—Q. Did any noise of the paddle-wheel interfere with your hearing any bells if there were any in the neighborhood?

A. No, not to any extent; it didn't amount to anything.

Q. When you went down in your boat after you left the oil works to find the "Transit" again, you passed in the neighborhood of the "Sonoma" and "Ventura," did you? A. No, I did not.

Q. You did not pass them? A. No. [100]

Q. You say you did not hear their anchor bells?

A. No, I did not hear any of them.

Q. You don't know, do you, as to whether their anchor bells were struck or not?

A. No, I do not; I did not hear any.

**[Testimony of Raymond M. Fahrenholtz, for
Libelant.]**

RAYMOND M. FAHRENHOLTZ, called for the libelant, sworn.

Mr. HENGSTLER.—Q. Mr. Fahrenholtz, how old are you? A. 24 years old.

Q. Where do you reside? A. In Oakland.

Q. Where are you employed now?

A. With the Key Route Company.

Q. Where were you employed on the 13th of September, 1909?

A. With the Southern Pacific Company on the car ferry “Transit.”

Q. How long had you been employed there at that time?

A. Not quite a year; I don’t remember the exact time.

Q. What was your capacity while you was there?

A. Deck-hand, and I was raised from deck-hand to apprentice pilot.

Q. Where were you stationed on the boat on the trip that left Oakland Pier for the Mission Bay Slip at approximately 10:53 P. M. on December 13, 1909?

A. I was stationed at the port side of the pilot-house of the steamer “Transit.”

Q. Inside or outside? A. Inside.

Q. What were your duties?

A. Blowing the fog signals.

Q. What was the condition of the atmosphere?

A. Foggy.

(Testimony of Raymond M. Fahrenholtz.)

Q. Had you received any instructions about blowing whistles? A. Yes.

Q. What were your instructions?

A. Blow the regular fog whistles required by the United States Government.

Q. Had you ever done service in that capacity before? A. Yes. [101]

Q. How often did you blow the fog signals?

A. On an average of every 30 seconds.

Q. What was the manner of blowing the whistles?

A. A blast from 4 to 6 seconds.

Q. How do you know that you would blow it every 30 seconds? A. I counted it.

Q. You counted it; how did you count it?

A. Well, the way all navigators count it.

Q. How is that?

A. They count a second as 1-5, 2-5, 3-5, 4-5, 5-5, and so on.

Q. Would you continue counting and blow the whistles regularly according to that practice?

A. Yes.

Q. Did you have any other duties besides blowing the whistles?

A. No, not outside of listening for fog-bells or whistles.

Q. Did you hear any vessel in close proximity to the "Transit" on any time on that trip before it came near the "Fullerton"?

A. Shortly after leaving the Oakland side we heard one of the ferry-boats.

Q. Before the "Transit" struck the "Fullerton"

(Testimony of Raymond M. Fahrenholtz.)

did you hear the sound of any bell?

A. I heard the slip bell—the 16th Street Slip bell.

Q. Did you hear the sound of any ship's bell?

A. No.

Q. None whatever? A. No.

Q. What was the first impression before the accident that occurred as it appeared to you?

A. How do you mean?

Q. What was the first impression of the accident—what was it that occurred first?

A. Well, the lookout reported a light of the “Fullerton.”

Q. Did you see the ships come together?

A. Yes; I was in the wheelhouse. [102]

Q. How did they come together?

A. The tide set the “Transit” across the “Fullerton's” bow.

Q. The tide set the “Transit” across the “Fullerton's” bow? A. Yes, the tide.

Q. Was the ship under way at the time?

A. Yes, she had her headway.

Q. The headway ceased, then, at that time, did it?

A. The headway brought the “Transit” in front of the “Fullerton,” and the tide set the “Transit” on to the “Fullerton.”

Q. If it had not been for the tide she would not have hit the “Fullerton”; is that correct?

Mr. CAMPBELL.—Don't argue with the witness.

Mr. FOULDS.—Q. Was the night windy?

A. No.

Q. Were there any noises about the pilot-house

(Testimony of Raymond M. Fahrenholtz.)

that would prevent you, that you could not hear a noise in the vicinity? A. No.

Q. What was done, did you observe, immediately after the collision?

A. Lashed both boats together.

Q. When did you hear the fog-bell of the "Fullerton" for the first time?

A. The first time I noticed the fog-bell of the "Fullerton" was when we pulled back from the shore in the lifeboat.

Q. After the collision what did you do? A. 1

A. I got orders to go down on the deck to assist the other deck-hands in making her fast.

Q. After that what did you do?

A. Got orders to go in the lifeboat.

Q. Were you in the boat with the first officer?

A. Yes.

Q. Upon your return did you hear the sound of any fog-bell or any ship's bell before you saw the "Transit" and the "Fullerton" together? A. No.

[103]

Q. Did you hear any bells from those two ships?

A. Yes.

Q. Could you hear the bell from both ships?

A. I picked up the bell from the "Transit" first on account of being the largest bell—it carried farther; then we heard the "Fullerton."

Q. Did you observe in a general way where you were when you first heard the "Fullerton's" bell?

A. No.

Q. Could you see the "Fullerton"?

(Testimony of Raymond M. Fahrenholtz.)

A. No; not when we first heard the bell.

Cross-examination.

Mr. CAMPBELL.—Q. Where was the whistle-cord that you pulled? A. Right over my head.

Q. Right over your head? I don't understand about this counting 1-5, 2-5, and so on.

A. That is the way we count seconds.

Q. What do you do—do you count that way between the intervals of the blasts, or for the blasts?

A. No, between.

Q. Between the blasts?

A. Yes, between the blasts.

Q. That is, you stood there in the pilot-house and then after you blew a whistle you would say, 1-5, 2-5?

A. I would not say it; I would count it in my mind.

Q. You would repeat mentally to yourself, 1-5, 2-5, up to how far? A. To 30.

Q. Then you would blow? A. Yes.

Q. How long a blast would you blow?

A. 4 or 6 seconds; maybe 4 or 5 seconds; the law requires from 4 to 6 seconds.

Q. This fog was prevailing all the way across the bay? A. Yes.

Q. So that you stood there in the pilot-house mentally counting this 1-5, 2-5, from Oakland Long Wharf to the point of the collision? A. Yes.

Q. You have been told that that is the way that navigators do?

A. Yes, not only been told, but know it. [104]

(Testimony of Raymond M. Fahrenholtz.)

Q. What have you sailed on?

A. Sailed clear around the world, sailing ships and steamers; both.

Q. And they all count that way?

A. Yes, all navigators do.

Q. Did you have a clock in the pilot-house to go by?

A. The clock was over near the captain on the starboard side.

Q. As I understand you, the headway that the "Transit" had carried her across the bow and the tide set her down on to the bow of the "Fullerton"?

A. Yes.

Q. At the time that the tide set her down on to the bow of the "Fullerton" her engines had been stopped?

A. I could not say as to that; I don't know. I was not attending to the engines.

Q. Hadn't you heard the captain ring to the engine-room?

A. We don't always hear the ring on the sounding-tube.

Q. Haven't you got a telegraph?

A. We got a bell tube.

Q. Did you hear him pulling the bell?

A. I did not pay any attention to him pulling the bell. I could not say what he did with the bell.

Q. Yet you stood right alongside of him?

A. I stood on the opposite side of the wheel-house.

Q. You stood between him and the first officer?

A. I stood back of the first officer.

Q. Sort of to the side of him?

(Testimony of Raymond M. Fahrenholtz.)

A. The captain was over there and the first mate was there, and I stood in back of the first mate.

Q. From the pilot-house can't you hear the bells ringing in the engine-room?

A. They have a sounding tube; yes.

Q. That is for the purpose of enabling the men in the pilot-house to hear if the bell rings in the engine-room? A. Yes.

Q. Didn't you hear the bells ring in the engine-room?

A. No, [105] I can't say that I did. I did not pay any attention to them; they are not so loud as all that.

Q. Do you know whether he had rung the full-speed bell? A. No.

Q. Was there any apprehension on your part as to whether that vessel, your vessel, was running full speed ahead or beginning to stop when you saw you were going on to this vessel?

A. From the captain's experience, I had an idea that he had stopped her; that was the only thing that could be done.

Q. Weren't you afraid—wasn't there any apprehension on your part, any fear on your part?

A. For what?

Q. That you were going on the "Fullerton"?

A. Why, he was in such a position that he could not clear her.

Q. Were you the man who steered the rowboat from the "Transit" to the shore? A. Yes.

(Testimony of Raymond M. Fahrenholtz.)

Q. What course did you steer?

A. I don't remember the course he gave me.

[Testimony of Harry A. Johnson, for Libelant.]

HARRY A. JOHNSON, called for the libelant,
sworn.

Mr. FOULDS.—Q. Where do you live?

A. In Fruitvale.

Q. What is your age? A. 51.

Q. Where are you employed now?

A. By the Southern Pacific.

Q. Where? A. On the steamer "Transit."

Q. What is your capacity on the "Transit"?

A. Deck-hand.

Q. How long have you been on that vessel, in a general way?

A. I have been off and on of her, and on other boats. I have not been steady on her right along.

Q. Were you a deck-hand on the "Transit" on December 13, 1909? A. Yes. **[106]**

Q. Do you remember the trip upon which the collision between the "Transit" and the "Fullerton" occurred? A. I do.

Q. On December 13, 1909? A. I do.

Q. During that entire trip what was the condition of the night, clear or foggy? A. It was foggy.

Q. Where were you stationed on the "Fullerton" on that trip?

A. On the port bow—on the lookout.

Q. On the port bow? A. Yes.

Q. How were you stationed with relation to the freight-cars?

(Testimony of Harry A. Johnson.)

A. I was leaning up against a car listening for the sound of a whistle or a fog-bell.

Q. On the front or side?

A. On the side of the car, with my hand leaning over like that so as to get the sound from both places.

Q. On each side of the car? A. Yes.

Q. Were you leaning up against the car?

A. Like this (illustrating).

Q. Were you in a position where you could see in both directions?

A. See in both directions and listen in both directions.

Q. You were stationed as a lookout on the entire trip?

A. Yes; well, not the entire trip, because as soon as we came out I didn't have my oil clothes on. I went down to put my oil clothes on and there was a spar buoy there, and when we got up to the spar buoy I was out. I was out about 5 minutes after leaving the slip.

Q. Did you notice any vessels near that you reported on the way over?

A. We reported some ferry-boat coming out from the narrow gauge from the Alameda Mole.

Q. Did you notice any other vessels near?

A. Not at all. [107]

Q. Did you observe that the "Transit" was going full speed or going slowly?

A. Well, that is more than I can tell. She was not going the speed she generally runs.

Q. What is the first you saw immediately before

(Testimony of Harry A. Johnson.)

the collision occurred?

A. Before the collision occurred there was a light reported, an anchor light, at an angle like that from the bow.

Q. Did you hear any bell?

A. Only the 16th Street bell.

Q. You heard the 16th Street bell?

A. Yes, about one or two minutes. I could not say exactly how long before. We heard it and reported it to the pilot-house, reported it to the second officer and the second officer reported it to the pilot-house.

Q. Did you hear any ship's bell before that collision? A. No.

Q. None whatever?

A. Not before the collision.

Q. When was the first time you heard the ship's bell on the "Fullerton"?

A. After our bell was rung first, then they sounded the "Fullerton's" bell.

Q. Tell how the ships came together.

A. Well, so far as I could see, we were about half a point to the northward of her, or a point or so, and we didn't have headway enough to clear her, and I think after we stopped she must have drifted on her, and they went together.

Q. What were your duties at all times in going across on the ship as lookout?

A. I would look out when it was foggy weather, all hands would look out—the four deck-hands and second officer.

(Testimony of Harry A. Johnson.)

Q. What were your duties as lookout?

A. Our duty is to look out and listen for signals and report to the second officer and he reports to the captain.

Q. Did you do that all the time?

A. Yes, always. [108]

Q. Were you listening before this collision occurred? A. Yes.

Q. And up to the time the collision occurred?

A. Right until the collision occurred.

Cross-examination.

Mr. CAMPBELL.—Q. That was a very dense fog? A. It was.

Q. How long did it last?

A. Well, it lasted until after we got back to the “Transit” after being ashore; then it was clear after a little bit after we picked up the “Transit” and “Fullerton’s” bells.

Q. You got back to the “Fullerton,” and it cleared up? A. Yes, it cleared up after a little.

Q. What time was the “Transit” removed from there?

A. I never carried any watch and I couldn’t tell the time.

Q. What time were you taken away?

A. That is what I can’t tell you because I don’t carry no watch, and I never looked at any watch, because I have got lots of work to do, and when we have work to do we don’t have time to look.

[Testimony of Philip Olsson, for Libelant.]

PHILIP OLSSON, called for the libelant, sworn.

Mr. HENGSTLER.—This is one of the other witnesses, one of the members of the crew who was on the lookout on the port bow of the “Transit,” and we expect to prove by him the same facts that were proved by the preceding witness, and if counsel will stipulate that those facts are proved, that is that he was on the lookout, we won’t examine him.

[109]

Mr. CAMPBELL.—I am not going to stipulate that any facts are proved. I will cut down the examination as much as I can.

The COURT.—Proceed and get to the point of what occurred at the time of the collision.

Mr. FOULDS.—Q. What is your age? A. 51.

Q. Where are you employed now?

A. At the Southern Pacific, on the steamer “Transit.”

Q. What is your capacity? A. Deck-hand.

Q. What was your capacity on the night of December 13, 1909?

A. I was on the lookout on the port bow.

Q. Who else was on the lookout on the port bow?

A. Well, I didn’t see the rest of them. I was looking ahead all the time to see if anything came in the road of the “Transit.” I didn’t place them other hands.

Q. How many were there?

A. All hands got to be out foggy weather.

Q. Do you know how many there were out on the bow?

(Testimony of Philip Olsson.)

A. The next one to me was the second officer.

Q. Was there any wind that night? A. No.

Q. Was the night clear or foggy?

A. It was very foggy.

Q. Did you observe whether the ship was going fast or slow?

A. It went slow—slow speed, in my judgment.

Q. What were your duties as lookout?

A. To look after the dangers in the road for the “Transit,” ships or logs, or anything like that.

Q. Did you have to listen as well as to look?

A. Yes.

Q. Did you observe any dangers near?

A. No, not before we came out a little ways in the bay.

Q. What was that?

A. I saw a bright light on the port bow. [110]

Q. How long was that—was that some time?

A. About half an hour or so.

Q. Did you hear any ship’s bell? A. No.

Q. Did you listen for ship bells? A. Yes.

Q. Were you on duty all the time on that trip?

A. Yes.

Q. When did you first hear the bell from the “Fullerton”?

A. After we had made the “Transit” fast to the “Fullerton” and Captain Higgenson told me to go on the deck and ring the bell, after I rang it a few times, they began to ring the bell on the “Fullerton.”

Q. Did you hear any bell before you saw any lights on the “Fullerton”? A. No.

(Testimony of Philip Olsson.)

Q. Did you hear any shore-bell?

A. I heard the 16th Street bell.

Q. Tell us how the ships came together.

A. Well, the "Transit," it seems the tide took hold of her and drove her right down on the "Fullerton's" bow, broadside on the "Fullerton's" bow, on amid-ship.

Mr. CAMPBELL.—No questions.

[Testimony of Olaf Wallon, for Libelant.]

OLAF WALLON, called for the libelant, sworn.

Mr. FOULDS.—Q. Where do you reside, Mr. Wallon? A. Oakland.

Q. Where are you employed?

A. Southern Pacific steamer "Newark" at the present time.

Q. Where were you employed on the 13th of December, 1909? A. On the steamer "Transit."

Q. What was your capacity?

A. Deck-hand. [111]

Q. On the trip on which the collision occurred with the "Fullerton" where were you stationed, what was your duty?

A. I was on the lookout on the starboard bow.

Q. On the starboard bow? A. Yes.

Q. What were your duties as lookout?

A. To look for fog-whistles or fog-horns, to look around for anything that might be in the road, logs or anything like that, any noises we might hear.

Q. Was it foggy or clear? A. Very foggy.

Q. Was it windy that night?

A. No, it was not windy, not to speak of. As far

(Testimony of Olaf Wallon.)

as I can recollect, I don't think there was any wind.

Q. Did you see any vessels close by—did you report any vessel close by? A. I don't remember.

Q. Did you hear any ship's bell at all? A. No.

Q. All the way across? A. No.

Q. Until you came into the collision? A. No.

Q. Did you see the light?

A. I saw the light.

Q. But you heard no bell? A. No.

Q. Had you heard any bells from the shore?

A. No, not that I remember. I don't remember if I did.

Q. When you first saw the light was it pretty close?

A. Pretty close, yes, when I saw the light.

Q. If there had been a ship's bell as near as the light, could you have heard it?

A. Sure. Oh, yes, I could have heard it, before I saw the light.

Q. Do you think you could have heard the ship's bell from the "Fullerton" before you saw the light?

A. Oh, yes.

Q. How long before?

A. Five minutes before I seen the light. [112]

Q. Where was the light when you saw it first?

A. I don't know just about that. I was thinking it was up there—a little on the port bow like that (illustrating).

Q. How did the ships come together?

A. Well, I couldn't say very well. I was kept very busy at the time. The "Transit" went into the

(Testimony of Olaf Wallon.)

“Fullerton’s” bow and the bowsprit of the “Fullerton” hit on the smokestack and stopped there.

Cross-examination.

Mr. CAMPBELL.—Q. Were you trying to locate the “Fullerton” in the fog prior to the time when you saw the light? A. I don’t remember if I was.

Q. You knew you were approaching shore, didn’t you?

A. Well, I knew we were getting somewhere near on the other side, on the San Francisco side.

Q. Had you been on the lookout when you left on the 9:40 trip for Oakland Pier?

A. I don’t remember.

Q. You knew that the “Fullerton” was in the vicinity of the Mission Bay Slip, didn’t you?

A. Well, I knew she was laying somewhere around there.

Q. Weren’t you at all apprehensive because you had not heard her bell that night?

A. Well, I really didn’t think much about it.

Q. As a matter of fact, the “Fullerton” didn’t come into your head at all?

A. No, not at the time.

Mr. FOULDS.—We have the second officer of the ship here. He is an employee who was formerly in the employ of the company, but he is now pensioned, and is a very old man, and lives in Oakland, but since he has become pensioned, he has become very hard of hearing, and it will be troublesome to cross-examine him as a witness, and if the other side will waive [113] his examination, it will save the Court time,

(Testimony of Olaf Wallon.)

I think. The same facts will be testified to by him as was testified by the three or four deck-hands that we have.

Mr. CAMPBELL.—How long has he been hard of hearing—since December 13, 1909?

Mr. FOULDS.—I think he was slightly hard of hearing then.

Mr. CAMPBELL.—Are you willing to admit that?

Mr. FOULDS.—Yes.

Mr. HENGSTLER.—That he was slightly hard of hearing on December 13, 1909; yes.

[Testimony of Abraham Healey, for Libelant.]

ABRAHAM HEALEY, called for the libelant, sworn.

Mr. FOULDS.—Q. Mr. Healey, where do you reside? A. In Oakland.

Q. What is your age? A. 49.

Q. Where are you employed?

A. On the steamer "Transit."

Q. Were you employed on December 13, 1909, on the steamer "Transit"? A. Yes.

Q. What was your occupation at that time?

A. I was chief engineer.

Q. How long had you been employed at that time?

A. By the company?

Q. As chief engineer on the "Transit."

A. I had been about a year on the "Transit," I guess.

Q. Do you remember the trip shown in the log-book that we have been speaking about where the collision occurred with the "Fullerton"? A. Yes.

(Testimony of Abraham Healey.)

Q. When you left the Oakland Pier at 10:53?

A. Yes; I never [114] will forget that.

Q. During the entire trip what speed was given to the engines?

A. We were on a slow bell from the start to just a few seconds before the collision occurred.

Q. Did you have any interruption in the course—were you signaled to stop? A. Yes, one time.

Q. Where was that?

A. A little after we left the slip on the Oakland side.

Q. That is the only time?

A. That is the only time we stopped.

Q. Did you go at full speed at any time?

A. No.

Q. What was the speed?

A. With the exception of this time right after we seen the light, the captain gave me the jingle-bell. That means full speed ahead, and that was only a second—

Q. (Intg.) Then what signal was given?

A. Well, the ships were close together, and he gave me two bells; that is to stop her.

Q. Any further signals given? A. No.

Q. Did you obey the signals? A. Yes.

Cross-examination.

Mr. CAMPBELL.—Q. Have you the log-book?

A. Yes.

Q. Have you got it here?

A. No, the captain's log-book is here.

Q. Is your recollection of the time that elapsed

(Testimony of Abraham Healey.)

between your full-speed bell and your stop-bell based upon the log entries, or do you recall it this length of time?

A. I can recall it myself; I remember it.

Q. Were you handling the engine?

A. I was handling the engine myself. [115]

Q. What were your watches?

A. My watch was a 24-hour watch.

Q. 24? A. Yes, but I got an assistant with me.

Q. How many assistants have you got?

A. One.

Q. When did you stand watch, you did not stand the 24?

A. No, we didn't stand the 24; the assistant he takes from 12 till morning.

Q. From 12 o'clock at night?

A. Yes, till six in the morning.

Q. It is six hours on and six hours off?

A. No, we get 6 hours off out of the 24.

Q. You run from 6 o'clock in the morning until 12 o'clock at night?

A. In foggy weather we stay on 24 hours—no let-down at all. On those occasions I have my assistant in the room, and he assists.

Q. How long had you been working up to this time?

A. We went to work at 8 o'clock in the morning, and that was half-past 11, pretty near.

Q. You had been on duty all that time?

A. Yes; of course, I didn't handle the engine all the time, because the assistant helped. We handled

her trip about, and we would sit down and rest then.

Mr. HENGSTLER.—That is the libelant's case.

[**Proceedings Had Concerning Excerpt from Log.**]

Mr. CAMPBELL.—I should like to read out of the log as follows: “Departed from Oakland Pier at 5:43 P. M.; arrived at Mission Bay 6:27 P. M. Departed from Mission Bay 7:14; arrived at Oakland Pier at 7:52; departed from Oakland Pier 8:01; arrived at Mission Bay at 8:40; departed from Mission Bay at 9:30, and arrived at Oakland Pier at 10:24; departed from Oakland Pier at 10:53; collision 11:25.”

Mr. HENGSTLER.—I notice that the entry for that is not complete in the record. [116]

Mr. CAMPBELL.—All I have read from the log are the times of the trips.

Mr. FOULDS.—It is not a complete record of it.

Mr. CAMPBELL.—The statements here as to the explanation of the collision are self-serving declarations so far as you people are concerned, and I don't care to make them part of my case at all.

Mr. FOULDS.—We want the whole log. It is only a very small statement. Opposite the trip there is a notation: “Held for Orders on Account of Fog.”

Mr. HENGSTLER.—We ask that the entry for that day opposite to 10:53—11:25 P. M.—

Mr. CAMPBELL.—I object, if your Honor please, to their reading into this record a self-serving declaration from the log; they now propose to read a description of this collision entered by somebody. All I am asking for from the log is the time of the voyages.

Mr. HENGSTLER.—We appreciate that the weight of this as evidence is for your Honor to determine. Mr. Campbell has read a part of an entry of that date into the record, and all we offer it for is to make the entry for that day complete.

Mr. CAMPBELL.—Does that entry throw any light upon the time of the voyages?

Mr. FOULDS.—It throws light upon the time of the collision.

Mr. HENGSTLER.—It notes the time of the collision.

Mr. CAMPBELL.—That can go in, except that I am not consenting that you should read self-serving declarations into the record; I am not binding myself to the sufficiency of it.

Mr. FOULDS.—No. “11:25; drifted across the bow of the four-masted barkentine ‘Fullerton’; strong flood tide; [117] no bell rung or noise of any kind made to locate her position.”

Mr. CAMPBELL.—Who wrote that entry in the log?

Mr. FOULDS.—The second officer.

[Endorsed]: Filed Jan. 25, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [118]

*In the District Court of the United States in and for
the Northern District of California, First
Division.*

No. 15,070.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Libelant and Cross-respondent,

vs.

Barkentine "FULLERTON," Her Tackle, Apparel
and Furniture,

Claimant and Cross-libelant.

Deposition of T. A. Grant.

Be it remembered that on Tuesday, January 7th, 1913, pursuant to stipulation of counsel hereunto annexed, at the office of Messrs. McCutchen, Olney and Willard, in the Merchants' Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me Francis Krull, a United States Commissioner for the Northern District of California, to take acknowledgments of bail, and affidavits, etc., T. A. Grant, a witness produced on behalf of the claimant and cross-libelant.

Ira A. Campbell, Esq., of the firm of Messrs. McCutchen, Olney & Willard, appeared as proctor for the claimant and cross-libelant, and L. C. Hengstler, Esq., and E. J. Foulds, Esq., appeared as proctor for the libelant and cross-respondent, and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did there-

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upon depose and say as is hereinafter set forth.
[119]

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of T. A. Grant may be taken *de bene esse* on behalf of the claimant and cross-libelant, at the offices of Messrs. McCutchen, Olney & Willard, in the Merchants' Exchange Building, in the city and county of San Francisco, State of California, on Tuesday, January 7th, 1913, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by Herbert Bennett.

It is further stipulated that the deposition, when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.) [120]

T. A. GRANT, called for the cross-libelant, sworn.

Mr. CAMPBELL.—Q. Were you master of the barkentine "Fullerton" on the 13th day of December, 1909? A. Yes, sir.

Q. When she was in collision with the car ferry "Transit"? A. Yes, sir.

Q. On San Francisco Bay? A. Yes, sir.

(Deposition of T. A. Grant.)

Q. How long had you then been master of her?

A. Since April 6th, 1909.

Q. Were you aboard at the time of the collision?

A. No, sir, I was not aboard.

Q. When did you go aboard of her following the collision? A. Between 7:30 and 8 in the morning.

Q. The next morning?

A. The following morning.

Q. Where was she when you boarded her the next morning with respect to the position that she had occupied when you left her last?

Q. She was further to the southward—let me see. I always get turned around in this bay. She rested over there (pointing); that would be farther to the northward.

Q. You had better get your chart.

A. (Contg.) No, it would be farther southeast, probably half a mile or three-quarters of a mile. As near as I can remember, she was to the southeastward of the position where I left her. I could not say how far, but I know she was out of position.

Q. Did you measure the distance? A. No, sir.

Q. When did you last leave her prior to the collision?

A. I left her about—somewheres around 5 o'clock in the evening.

Q. Of that day?

A. That same date. I forgot the date of the collision, the night of the collision. [121]

Q. The night before the collision?

A. Yes, sir, that same evening.

(Deposition of T. A. Grant.)

Mr. CAMPBELL.—I think it is admitted that the collision took place during the night.

Mr. HENGSTLER.—It might have been early the next morning.

The WITNESS.—No, it was somewhere about 11:30.

Mr. HENGSTLER.—Q. On the 13th of December, 1909? A. Yes, sir.

Mr. CAMPBELL.—It was in the night-time.

Q. Where was she anchored when you left her the evening prior to the collision?

A. About half a mile off the Union Iron Works and to the southward and eastward of the forbidden anchorage. I do not know just how far. That is only approximate.

Q. Are you acquainted with the car ferry "Transit"?

A. Well, I have seen her going by back and forth from the ship; that is all.

Q. What is she used for?

A. Ferrying cars across from Oakland.

Q. Where did she land on the San Francisco shore side? A. Somewhere around Sixteenth Street.

Q. What, if anything, did they have at the place where she landed?

A. I think they have lights there and a fog-bell.

Q. Was there a structure of any character?

A. They have a slip.

Q. Point out to me on this chart the ferry slip at which the "Transit" landed on the San Francisco shore side.

(Deposition of T. A. Grant.)

A. Somewheres in that vicinity there (pointing).

Q. Do you know?

A. I cannot tell exactly which it is; I should judge it was there (pointing). [122]

Q. Take a pencil and point to the place where you would say it was.

A. I should say somewheres in there (pointing).

Q. Mark on it the letter T.

A. Yes, sir. That is a new chart since that time.

Q. Where was she anchored with respect to the slip at which the "Transit" landed?

A. Somewhere up in here (pointing).

Q. Mark it with the letter F.

A. Yes, sir (marking).

Q. Where was that anchorage position with respect to the slip itself, that is to say, with respect to its being opposite, north or south?

A. South and east.

Q. South and east of a line drawn through the slip east and south.

A. It would be east approximately.

Q. Where would it be with respect to being north and south of it? A. It would be to the southward.

Q. How long had the "Fullerton" been anchored at that place?

A. September, October, November, and December. Approximately two months, I should say.

Q. When was she taken in there, do you recall?

A. September 20th, was it? It is so long ago I forget. Somewheres around September. The date of it I cannot say for certain.

(Deposition of T. A. Grant.)

Q. Had you been master of her during that time?

A. Yes, sir.

Q. Did she occupy the night before the collision the same position that she had been anchored in when she was originally taken there?

A. Well, within half a ship's length or so. You see, on the eastward they had to give her chain, on the southeast we give her all her chain and gradually heave it in again.

Q. If she did change her position from where she was originally anchored what would cause the change? [123]

A. The wind and tide.

Q. At the time of the collision were there any forbidden anchorage zones in San Francisco Bay?

A. Yes, sir.

Q. Where did the southern-most anchorage zone extend?

A. From Sixteenth Street across to the narrow gauge mole.

Q. Will you mark on the chart with the letter A the point on the San Francisco shore from which the forbidden anchorage zone started?

A. On this. That is Sixteenth Street there (pointing).

Q. And mark on the Mole side B.

A. Yes, sir (marking).

Q. Do you know whether or not the anchorage zone was a straight line drawn between the points A and B?

A. Yes, sir. I was shown a chart of the forbidden anchorage and I took the trouble to take the bearings

(Deposition of T. A. Grant.)

there when I was anchored there. I knew they would shift me if I was there.

Q. Were you ever required to shift by the State authorities? A. No, sir.

Mr. CAMPBELL.—With the consent of counsel I should like to draw a line between A and B if I may.

Mr. HENGSTLER.—I suppose he means that that forbidden anchorage is the zone which is shaded dark here from the point A to B?

The WITNESS.—Yes.

Mr. HENGSTLER.—Not the line itself?

Mr. CAMPBELL.—No.

Q. Where was the forbidden anchorage zone with respect to its being north or south of the line A-B?

A. It was to the north.

Q. Indicated on this chart, it is shown how?

A. In what way?

Q. How is it shown on the chart, the forbidden anchorage?

A. It is shown by the dark color—the forbidden anchorage [124] darkened.

Q. I will ask you whether or not there was a forbidden anchorage zone at the time of the collision as is now shown on the chart to the southward of the line A-B. A. No, sir.

Q. I will ask you whether or not there was at the time of the collision a forbidden anchorage zone which is now marked with the words, “forbidden anchorage,” which I underscored and marked with the letters C-D. A. No, sir; not at that time.

Q. I will ask you whether or not there was at the

(Deposition of T. A. Grant.)

time a forbidden anchorage zone shown on the shaded portions through which I drew the line marked E-G.

A. No, sir; not that I was aware of. That has come out new since they built the new slips at the Potrero.

Mr. CAMPBELL.—I desire to have the record show that this chart is corrected up to November 12th, 1912.

Q. What, if anything, if you know, caused the change in position of the "Fullerton" from where she was when you left her the evening before the collision and the place in which you found her when you boarded her in the morning?

A. The change was caused by the "Transit" striking her and the tide drifting her. After the "Transit" broke her propellor she lost control of herself; she was hanging on the "Fullerton's" anchor, and naturally she dragged, she made a sweep of the bay with the flood tide.

Q. Who anchored you in that position?

A. One of the red-stack towboats.

Q. What company owns the red-stack towboats?

A. The Shipowners and Merchants' Tugboat Company.

Q. When you left the ship on the evening prior to the collision, [125] who, if anyone, was left on board?

A. The engineer was left there to run the lights—keep the electric lights, you know—and the watchman.

Q. Anyone else?

(Deposition of T. A. Grant.)

A. The engineer's father was on board that evening.

Q. Do you know whether or not the vessel was equipped with a fog-bell?

A. The ship was equipped with a fog-bell and all that the law required in every way.

Q. What do you mean by that, "all that the law required"? A. All the law requires.

Q. What have you to say with reference to lights?

A. She had electric lights, riding lights; one aft and one forward.

Q. What was their condition with respect to the requirements of the law? A. They were perfect.

Q. Was there anything ashore at the point where the "Transit" landing which was used as a fog signal? A. Yes, sir.

Q. What was it?

A. It was a bell set in a box facing toward their route across the bay.

Q. And where did their route start from across the bay?

A. From that forbidden anchorage, you see where the ferries were passing back and forth.

Q. Where was the bell located on the San Francisco side?

A. It was in the slip, at the end of the slip.

Mr. HENGSTLER.—Q. What bell are you talking about now?

A. The Southern Pacific fog-bell for picking up their slip in the fog.

Mr. CAMPBELL.—Q. Was this fog-bell on the

(Deposition of T. A. Grant.)

slip at which she landed? A. Yes, sir.

Q. Were you ever aboard your vessel during the fog while she [126] was anchored there?

A. I dare say I have been. I have been there when it was raining, which makes about the same thing.

Q. Have you any recollection of ever having heard the fog-bell on the Southern Pacific slip ringing?

A. Yes, sir, I have heard it.

Q. Had you heard it prior to the time of the collision?

A. Yes, sir. Not on that day, you know, as the fog came up in the night.

Q. You were not there?

A. No, sir, but while I have been lying there I heard the bell.

Q. Had you ever seen the car ferry "Transit" come across the bay and land at the ferry slip?

A. I have never noticed it land. I have seen it pass by the ship.

Q. Which way coming and which way going on those trips?

A. One going to Oakland and one to the city on the east and southwest, approximately.

Q. How close would she pass to the anchored position of the "Fullerton"?

A. Sometimes she would pass within 100 feet of us when we would be lying to an ebb tide; she would pass within 100 feet of us, sometimes perhaps closer.

Q. Which way would she pass you—to the southward or northward? A. Northward.

Q. And when the tide was flooding which way

(Deposition of T. A. Grant.)

would she pass?

A. The same way, but she would keep further away from us. She would go to counteract the current.

Q. How far would she pass from you when the tide was flooding? A. I should say about a mile.

Q. And when the tide was ebbing?

A. She would come a little closer. [127]

Q. How many times a day would she pass over that route?

A. I don't know. I did know the engineer told me the time she would approximately pass us there. I forget now.

Q. What did the "Transit" carry?

A. Freight-cars.

Q. Where did she carry them?

A. She was a freight ferry and carried them on deck.

Mr. CAMPBELL.—I offer the chart in evidence and ask that it be marked Claimant's and Cross-libelant's Exhibit 1.

(The chart is marked "Claimant's and Cross-libelant's Exhibit 1.")

Cross-examination.

Mr. HENGSTLER.—Now, Captain, you said that the "Fullerton" had shifted her position between the time when you left her on the evening of the 13th at 5 o'clock and the following morning when you arrived on board at about 8 o'clock? A. Yes, sir.

Q. You have marked here on this chart, have you not, the position of the "Fullerton" as far as you understand it? A. As far as I understand it.

(Deposition of T. A. Grant.)

Q. That is approximate? A. Yes, sir.

Q. It might be nearer to the line A-B, might it not, or it might be farther away from the line A-B?

A. It might be further, but I do not think it would be closer to the line.

Q. You do not think it would be closer?

A. No, sir; at the time of the collision she was lying to a flood tide and she would be further away than she would be with an ebb tide. She would be lying to her anchorage at this way.

Q. Are you sure of that?

A. Yes, sir; it was flood tide. The weight of the "Transit" on her chain was too heavy to hold; [128] she naturally dragged with the tide to the south and east, so she shifted her position to the southward.

Q. Where do you think she was the following morning? Will you mark about the point on the chart?

A. She did not go so far because they gave her more chain.

Mr. CAMPBELL.—Q. Mark it with the letter F.

A. Yes.

Mr. HENGSTLER.—Q. That is the point, is it?

A. Yes, sir, approximately. It may have been a little further to the southward. It may have been further up here (pointing). I did not take particular notice.

Mr. CAMPBELL.—Q. Give it to us, Captain, as accurately as you can.

A. That would be about the position as near as I can tell (pointing).

(Deposition of T. A. Grant.)

Mr. HENGSTLER.—Q. What would you judge, Captain, was the position of the “Fullerton” to the line A-B in the evening when you left, in miles or fractions of a mile?

A. She would not be in exactly the same position when I left as she was when the accident happened, because when I left she was laying to an ebb tide and when the accident occurred she was laying to a flood tide. She was laying with 45 fathoms of chain out.

Q. When you left what distance would you say in miles she was from the line A-B?

A. About a quarter of a mile.

Q. At the time of the accident you would say she was further than 45 fathoms?

A. That would be 270 feet just by swinging. The ship was 200; that would be approximately. The bow would take about 45 fathoms, 270 feet further from the line when the accident happened than she was when I left the ship.

Q. That 300 is making an allowance for length of cable? [129] A. Yes, sir.

Q. The stern of the ship would be 500 feet?

A. That would be doubtful. If she was laying 45 fathoms down that would be the double length.

Mr. FOULDS.—Q. How deep was the water? You take into consideration the depth of water?

A. It would be only about three or four fathoms.

Mr. HENGSTLER.—Q. The distance from the stern of the “Fullerton” at the time when you left her the evening before to her stern at the time of the collision you estimate to be about 1,000 feet?

(Deposition of T. A. Grant.)

A. 800, because we do not know how much wind there was at the time, or whether the chain was taut or slack hanging in the sea.

Q. 800 feet? A. Say 800.

Q. How far was the "Fullerton" from the slip from the Southern Pacific slip on the evening when you left the "Fullerton"?

A. I should judge about three-quarters of a mile; between half and three-quarters of a mile. It is kind of hard to estimate distance two years afterward; you forget all about it.

Q. We want your best recollection at this time, Captain. Was she lying closer to the Southern Pacific slip than to the Union Iron Works or farther away?

A. No, sir, she was closer to the Union Iron Works.

Q. Closer to the Union Iron Works?

A. Yes, sir; that is the outside berth of the Union Iron Works.

Q. Whereabouts on this map is the Union Iron Works?

A. The Union Iron Works is here (pointing).

Q. Mark the place where you say the Union Iron Works is with a capital U.

A. Yes, sir; that is the outside berth (marking).

Q. And you say the "Fullerton" at that time was closer to the [130] Union Iron Works than she was to the slip? A. Yes, sir.

Q. Had the "Fullerton" changed her position from the day when she was anchored there to the day of the collision?

(Deposition of T. A. Grant.)

A. I do not know if she shifted any, only the length of the chain back and forth,—a 45-fathom *change*.

Q. You could not tell if she shifted or not?

A. No, sir; she had not shifted for the last month or so because I had the bearings. When it was blowing a gale of wind she had two chains down so they don't foul, and after the gale we take in the anchors. In a gale of wind she has more chain and both anchors.

Q. Any other vessels anchored near you at any time?

A. Yes, sir; one of the associated boats used to anchor just here (pointing) to the southward and westward of us.

Q. One of the Associated Oil boats? A. Yes, sir.

Q. What one was that?

A. The "Chancellor," if I am not mistaken.

Q. To the southward and westward of you?

A. Yes, sir.

Q. At what place? Will you mark it on the map?

A. Approximately in there somewhere (marking).

Q. At the point "G"?

A. Then there is other ships anchored in here (pointing).

Mr. CAMPBELL.—Q. You say to the southward and westward. Is the point marked "G" to the south or north—which?

A. It would be south of west anyhow.

Mr. HENGSTLER. — Q. More westerly than southerly?

A. Yes, sir, pretty near west, I guess. I know

(Deposition of T. A. Grant.)

there were vessels anchored at times closer in to the forbidden anchorage than we were.

Q. Was the "Chancellor" anchored in that position on December [131] 13th, 1909?

A. I could not say.

Mr. CAMPBELL.—You mean at the time of the collision?

Mr. HENGSTLER.—Yes.

A. I do not know if she was there that night or not. I do not think she was.

Q. But you do not know?

A. No, sir, not for certain.

Q. How far away was she from you when she was there?

A. We do not anchor within one-fourth of a mile of a ship if we can possibly help it.

Q. That is a general rule?

A. Yes, sir, we give them all the room we can.

Q. I asked you how far away, in your best judgment, was she actually from the "Fullerton" when she was anchored there?

A. I say about one-fourth of a mile.

Q. Do you say that as a fact or do you say that on the principle that it should be one-fourth of a mile?

A. I do not say that as a fact, because I do not know. I know the ship was anchored there. I did not take no notice whether it was one-fourth or one-half of a mile.

Q. She might have been one-fourth of a mile?

A. One-fourth of a mile, I should say. As a rule, they do not stop long. They come there for a few

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hours; maybe all night. As a rule, they do not stop long.

Q. You were there two months?

A. We were not in commission.

Q. During all the time you were laid up did you have any dealings with the Harbor Commissioners at all? A. No, sir.

Q. Were you notified at any time to change your position? A. No, sir.

Q. Not during the whole time?

A. No, sir, not during the whole [132] time we were there.

Q. When was this forbidden anchorage which is south of the line A-B prescribed by the Harbor Commissioners, do you know, Captain?

A. I do not know. About 6 months ago in towing into the Union Iron Works I noticed the position of the ships lying in there had been altered, so I asked the captain of the towboat about it and he said they had a forbidden anchorage there after making this new slip at the Potrero. I knew they were going to make a forbidden anchorage, but I did not know they had.

A. Are you certain, Captain, that the line A-B was the southern-most boundary of the forbidden anchorage at the time when this collision took place?

A. Yes, sir.

Q. And it is correctly shown on this map, is it?

A. Yes, sir.

Q. You have examined it and you are sure about that?

(Deposition of T. A. Grant.)

A. Yes, sir, that was the limit of the forbidden anchorage there at the time.

Q. Now, there was on board when you left on the evening before, you say, the engineer and the watchman?

A. Yes, sir, and the engineer's father, but he had nothing to do or was he connected with the ship.

Q. The engineer's father is not a member of the crew? A. No, sir.

Q. He was just visiting his son? A. Yes, sir.

Q. Do you know if he stayed there overnight?

A. Yes, sir.

Q. Was he there the following morning?

A. Yes, sir, he was there.

Q. What is the engineer's business when the "Fullerton" is at anchorage?

A. He had the night watch as watchman, as he had [133] to run the electric lights. He was the engineer.

Q. He was in charge of the lights?

A. Yes, sir, and was watchman. He was watchman and engineer on the night watch.

Q. He was watchman and engineer at the same time? A. Yes, sir.

Q. What was his name? A. Thomas Hemming.

Q. Is he with the "Fullerton" yet? A. No, sir.

Q. Do you know where he is?

A. Mr. Fullerton told me yesterday that he was up in the country somewhere. I do not know exactly where.

Q. What was the name of the other man on watch?

(Deposition of T. A. Grant.)

A. Olie Olson.

Q. What was his position on the "Fullerton"?

A. He was a sailor acting as watchman.

Q. He was a sailor on board? A. Yes, sir.

Q. Was he a member of the crew? A. Yes, sir.

Q. What do you mean by he was acting as watchman?

A. He was day watchman. We put the engineer on the night watch because if anything happened to his lights he could fix them. The other man at that time, I do not know if he knew how to run the lights.

Q. Had you instructed Olson to act as day watchman? A. Yes, sir.

Q. You appointed him to that duty?

A. Yes, sir; I appointed him.

Q. Do you know if he went ashore in the night-time?

A. No, sir, he was not ashore that night; he was on board.

Q. How do you know?

A. Because he was there when I got there in the morning and the engineer told me that he came on deck when the accident occurred and helped him to get lines to the "Transit."

Q. You only know that from what you were told. You do not [134] know that of your own knowledge?

A. As a certainty he never stopped ashore at night.

Q. As a certainty, you say? A. Yes, sir.

Q. You are not aboard the "Fullerton" in the night-time much, are you?

(Deposition of T. A. Grant.)

A. No, sir, I was only aboard the ship when it was blowing. In fine weather I usually go home.

Q. Did you stop there all night when it was blowing? A. Yes, sir, several nights in succession.

Q. You had instructed this man Olie Olson to act as watchman during the day? A. Yes, sir.

Q. Is the engineer required to be there during the daytime?

A. No, sir; but it is such a hard position to get back and forth from that they generally stop there for weeks, just long enough to go ashore and get something to eat.

Q. There was nothing to prevent him from going ashore? A. No, sir.

Q. He had no duty to perform during the daytime?

A. Just to sleep.

Q. And Olson slept at night and the other man during the day? A. Yes, sir.

Q. What kind of a fog-bell did you have on board?

A. The ordinary regulation fog-horn.

Q. What do you mean by that, Captain?

A. They have a bell on every ship. The law requires them to put a bell aboard the ship. They put a bell aboard the ship. We had a fog-bell.

Q. You do not know what kind of a bell the law requires? A. The law says a fog-bell, or fog-horn.

Q. Did you have a fog-horn also?

A. When you are laying at an anchor the bell is all that is needed, but a horn when you are under way. [135]

Q. That night no attempt was made to use the

(Deposition of T. A. Grant.)

horn? A. No, sir, only the bell.

Q. Only the bell? A. Yes, sir.

Q. You were not there, you do not know?

A. I know the orders were carried out. The orders were to use your bell and to keep a good lookout.

Q. Do you give those orders all the time?

A. I *making* a standing order.

Q. You may have made that order two months before?

A. Every night when I go I say: "You take care of the orders, going over the side. You know what to do; you keep your lights lit and your fog-horn or bell blowing." They had not been bothered with much fog.

Q. Do you mean you said that every night?

A. As a rule, I would, going over the side. They knew the standing orders were to keep a good lookout and the bell going in the fog, especially the riding lights. "You keep a good lookout in case they go out."

Q. How is that bell worked?

A. By hand ringing.

Q. By hitting against the side? A. Yes, sir.

Mr. CAMPBELL.—Do you move the bell or clapper? A. You move the clapper.

Mr. HENGSTLER.—Q. Whereabouts on board of the ship is that bell located?

A. On the forward end.

Q. Is it stationary?

A. Stationary. There is one forward and one aft, though the aft one is not used as a fog-horn. It is

(Deposition of T. A. Grant.)

only used for regulating watches. The fog-bell is forward and is used for fog-bell—fire-bell, or whatever bell you would use it for.

Q. With respect to the fore-castle, whereabouts is that?

A. The fore-castle in the “Fullerton” is aft. She is an oil [136] tanker, and not like the usual ship.

Q. How far forward is that bell located?

A. Between the fore-mast and the knight-heads. Whether it is on the fore-mast or not, I do not know. I forget now just where it is.

Q. It is on the highest part of the vessel, or is there any deck above it?

A. There is no deck above it. It is on the highest part; that is, if it was on the aft part of the fore-castle-head that would be the upper deck.

Q. Then the bell itself would be on the upper deck?

A. Yes, sir.

Q. But you are not sure?

A. No, sir; some ships have it on the fore-mast. I forget just where it is, on the rail or fore-mast, but I think the rail on the fore-castle-head.

Q. Has it been changed in its location since?

A. Not that I know of.

Q. Have you seen it recently? A. No, sir.

Q. You have not looked at it?

A. I only seen it laying in the dock at a distance.

Q. Where is the “Fullerton” now?

A. Somewheres between here and Port Harford, plying between Port Harford and San Francisco.

Q. You are not master of her any more, are you?

(Deposition of T. A. Grant.)

A. No, sir.

Q. How long since you left her, is it?

A. I left her December 18th, 1909.

Q. Are you master of a vessel now?

A. Not just at the present time.

Q. Have you been since you left the "Fullerton"?

A. I have been in charge of the "Lansing," the "Pectan," and the "Santa Rita." I left the "Santa Rita" three days ago and I am going back in her at the end of the month. [137]

Q. Are the "Lansing" and the "Pectan" sailing vessels? A. Steamships.

Q. All three are steamships? A. Yes, sir.

Q. What does the law prescribe with respect to the electric lights?

A. Well, we are not supposed to have electric lights on a sailing ship. In fact, generally, you do not have no electric lights on a sailing ship; you use an oil-lamp, but she is an oil-tanker and not allowed any naked lights. We have to use electric lights, which are much better than oil.

Q. You say the electric lights were in perfect condition according to the regulation of law?

A. Yes, sir.

Q. What does the law prescribe about riding lights on vessels?

Mr. CAMPBELL.—We object to the question. The witness is here to testify to facts, but not required to testify to the law.

Mr. HENGSTLER.—If he volunteers his impression of the law I would like to know what it is.

(Deposition of T. A. Grant.)

A. There are two riding lights on a ship, one on each end of her. She is over 200 feet long. The forward light has to be higher than the aft light.

Q. Does it make any difference how high they are, as long as the forward light—

A. We generally put the forward one about 15 or 20 feet above the main deck and the other light below. We just have a difference to distinguish one end of the ship to the other. When the ship is lying at anchor, if you have one higher than the other you can tell which way she is heading. The stern light is the lowest light.

Q. Do you know how far the sound of your bell on your vessel [138] carries, Captain? Have you ever made any experiments with it?

A. No, sir; we are not supposed to know how far she carries. We just know the bell is there and ring it.

Q. Whatever bell you have on you ring?

A. The bell we have there for that purpose is rung. We do not know how far the sound carries in the fog. You cannot rely on that. One time you hear it a long way, and sometime very short. Take all your whistles on the coast—I have been off and heard the whistle of Point Reyes 21 miles, and at other times you cannot hear it two miles. It is just according to the density of the fog and atmosphere.

Q. How long have you been the master of the “Fulberton”?

A. Since April.

Q. That same year?

A. Yes, sir.

Q. How many voyages had you made?

(Deposition of T. A. Grant.)

A. Two voyages to Honolulu and quite a number on the coast up to Portland. I forget how many. We considered a voyage from loading to loading. Our run between here and Port Harford is only 200 miles. We made a voyage in four days.

Q. You made two voyages in here to Honolulu?

A. Two to Honolulu and one to San Pedro and Portland. A number of them between San Francisco, Oleum and Port Harford. I do not know just how many. I made quite a number.

Q. Before the day of the collision you did not pay any particular attention to the "Transit," did you, Captain?

A. Well, the engineer remarked to me that she used to come too close, and I have had to haul my boat up lying astern to get clear of her. On certain stages of the tide she came too close to the ship. With the ebb tide certainly she could not drive on there against the tide. The captain knows what [139] his ship can do. When he uses his own judgment he could come right up so that he could touch the ship, practically; as long as the current carries it away from the ship it would be no danger.

Q. If he knew his vessel he could come within two feet?

A. Two feet would be quite close if the ship's steering was bad.

Q. You noticed, also, she used to come too close?

A. Yes, sir.

Q. Was that the regular thing, that she was passing you at a very short distance?

(Deposition of T. A. Grant.)

A. As I say, at certain stages of the tide you could come close and at flood tide keep away.

Q. Is it not a fact that the flood tide would make you go away?

A. Yes, sir; naturally, the captain would give you a wider berth when the current would set you towards a danger than he would when it was setting you off a danger.

Mr. FOULDS.—Q. When the tide was ebbing she would come closer sometimes?

A. Closer on an ebb than a flood. The ship would be farther away from the fairway and naturally keep away to counteract the tide. In making a landing you have noticed how the ferry-boats run to Goat Island at flood tide and keep up the other way to counteract the current.

Q. How long was the engineer's night watch when the ship was at anchor as she was that night of the collision?

A. I could not tell you. They had to arrange between the two of them; one would relieve the other. Still, the engineer was on generally on the heaviest part of the night. The other watchman may come on at 8, or he may come on at 4 or 5 in the morning. They had it divided between them. [140]

Q. Was it foggy when you left the boat?

A. No, sir, it was clear.

Q. Any indications of fog that evening?

A. No indication of fog.

Q. You say it was the engineer's duty to attend to the electric lights?

(Deposition of T. A. Grant.)

A. It was his duty to start the engines; they would practically run themselves.

Q. Was the engine run entirely by gasoline?

A. Our engines are different from any others; *They* are only two other engines on the coast like that.

Q. Have you ever known them to stop and require attention to start them again?

A. Not that I know of; we never had any trouble with our lights.

Q. If anything had happened with the engine had you any storage battery to light the lights until the engine was repaired? A. We had two dynamos.

Q. You only had one engine, and if anything happened to the engine the lights would go out?

A. If anything happened to the engine—

Q. The lights would go out until it was repaired?

A. They would not go out because we had oil lights in case of an accident, but we never used them unless it was absolutely necessary.

Q. If the engine had run irregularly the engineer undoubtedly would have run down to the engine and let the fog-bell go for a while?

A. That would have been his duty. The engine and the fog-bell is right together. It is not like you to go away. The bell is right there. It has a cord and he could stand at his engine-room door if he wanted to and ring the bell. He had a cord leading down there in case he was not [141] on the fore-castle-head to ring it.

Mr. HENGSTLER.—Q. He could pull the cord from the engine-room? A. Yes, sir.

(Deposition of T. A. Grant.)

Mr. FOULDS.—Q. Is the engine far from the door? A. Just a little ways.

Mr. HENGSTLER.—Q. You are sure the engineer would not have to step out of the door to work the bell?

A. Certainly he would be on the deck to work the bell.

Q. Could he do it in the engine-room?

A. No, sir.

Mr. FOULDS.—Q. There is a small ladder up to the deck?

A. The engine on the "Fullerton" is on her main deck under the forecastle-head.

Mr. HENGSTLER.—Q. It is a fact, is it not, Captain, that he could not work the engine and bell at the same time?

Mr. FOULDS.—Q. (Intg.) If anything had gone wrong?

A. I presume if he had to work the engine he would call the other watchman.

Mr. HENGSTLER.—Q. You presume?

A. Certainly, if he had to leave the deck he would call the other man.

Mr. FOULDS.—Q. He could not do both at the same time.

A. No, sir. A watchman would not go off the deck unless he had a man to relieve him in a position like that, because that would be out of all rules of navigation. A man is never supposed to leave his position unless he is relieved. You see, on a ship like that lying in the bay we only keep the engineer there for the lights.

(Deposition of T. A. Grant.)

Q. You recognize, of course, there was a possibility of the lights going out, and that is the reason you had him there?

A. He was there to look out for his engine and to keep it in repair. As a rule, on a sailing vessel like that they only [142] have one watchman, one there day and night, and he is supposed to sleep in the daytime. We had two watchmen. I do not know how the watches were regulated. As I came around the engineer was there on watch that night.

Redirect Examination.

Mr. CAMPBELL.—Q. How large a vessel is the “Pectan”?

A. The “Pectan” is five thousand and some nine hundred odd tons.

Q. What size is the “Santa Rita”?

A. She is 3682.

Q. And the “Lansing”?

A. Approximately 3,600. 3,500, I should say. The “Pectan” is the second largest oil-tanker in the world.

Q. When you were lying at anchor with an ebb tide would the stern of the “Fullerton” reach into the forbidden anchorage? A. No, sir.

Q. You are going east with the body of your brother now? A. Yes, sir.

Mr. FOULDS.—Q. When do you expect to be back, Captain? A. In about a month.

Q. Do you know the size of the bell on the “Fullerton”? How wide would you say was the mouth of the bell?

(Deposition of T. A. Grant.)

A. I do not know. I forget the size. I could not say. [143]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, Francis Krull, a United States Commissioner for the Northern District of California, do hereby certify that the reason stated for taking the foregoing deposition is that the testimony of the witness T. A. Grant is material and necessary in the cause in the caption of the said deposition named, and that he is bound on a voyage to sea and will be more than one hundred miles from the place of trial at the time of trial.

I further certify that on Tuesday, January 7th, 1913, I was attended by Ira A. Campbell, Esq., proctor for the claimant and cross-libelant, and L. C. Hengstler, Esq., and E. J. Foulds, Esq., proctors for the libelant and cross-respondent, and by the witness, and that the witness was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that said deposition was, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by Herbert Bennett, and afterwards reduced to typewriting; that the reading over and signing of said deposition of the witness was by the aforesaid stipulation expressly waived.

Introduced in connection therewith and referred to and specified therein is "Claimant's Cross-libelant's Exhibit 1."

I further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the United States District Court for the Northern District of California, the Court for which [144] the same was taken.

And I further certify that I am not of counsel nor attorney for any of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 17th day of January, 1913.

[Seal]

FRANCIS KRULL,

U. S. Commissioner, Northern District of California,
at San Francisco.

[Endorsed]: Filed Jan. 16, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [145]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,070.

SOUTHERN PACIFIC CO.,

Libelant,

vs.

The Barkentine "FULLERTON," etc.,

Defendant.

Memorandum Decision.

DIETRICH, District Judge.

While there are some features of the testimony which if detached tend to show a want of care in the navigation of the "Transit" immediately prior to the collision, considering the entire record I am inclined to the view that such a conclusion is not warranted. Upon the other hand, although the greater number of witnesses gave negative testimony in support of the libelant's contention that the "Fullerton's" bell was not properly sounded, it is not sufficient to overcome the positive statements of the three men who were upon the "Fullerton," to the effect that the bell was being rung in the manner required by the rules. It should be held, I think, that the collision was due to an inevitable accident, and that therefore it falls within the rule of "The Morning Light" (2 Wall. 550, 56). If not an inevitable accident, it is a case of inscrutable fault, and [146] falls within the rule of "The Worthington and Davis" (19 Fed. 836); in either alternative the result is the same. Both the libel and the cross-libel will therefore be dismissed.

[Endorsed]: Jan. 24, 1913. W. B. Maling, Clerk.
By Francis Krull, D. C. [147]

*In the District Court of the United States for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,070.

MISSION TRANSPORTATION AND REFINING
COMPANY, a Corporation,

Cross-libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Cross-respondent and Libelant.

Decree Dismissing Cross-Libelant's Libel.

This cause having come on regularly for trial the 17th day of January, 1913, before the Honorable F. S. Dietrich, Judge, and having been regularly continued from said day to the 20th day of January, 1913, and, after argument of counsel, having been submitted, and the Court on the 24th day of January, 1913, having filed herein its memorandum decision, directing the dismissal of the cross-libel herein;

Now, therefore, the Court, being fully advised in the premises, it is hereby ordered, adjudged and decreed that the cross-libelant herein take nothing, and that its cross-libel be dismissed without costs.

Dated February 1, 1913.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed Feb. 1, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [148]

*In the District Court of the United States for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,070.

SOUTHERN PACIFIC COMPANY,

Libelant,

vs.

The Barkentine "FULLERTON," etc.,

Respondent,

MISSION TRANSPORTATION AND REFINING
COMPANY, a Corporation,

Claimant.

Decree Dismissing Libelant's Libel.

This cause having come on regularly for trial on the 17th day of January, 1913, before the Honorable F. S. Dietrich, Judge, and having been regularly continued from said day to the 20th day of January, 1913, and, after argument of counsel, having been submitted, and the Court, on the 24th day of January, 1913, having filed herein its memorandum decision, directing the dismissal of the libel herein;

Now, therefore, the Court, being fully advised in the premises it is hereby ordered, adjudged and decreed that the libelant herein take nothing, and that its libel be dismissed without costs.

Dated February 5th, 1913.

FRANK S. DIETRICH.

[Endorsed]: Filed Feb. 5, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [149]

*In the District Court of the United States for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,070.

MISSION TRANSPORTATION AND REFINING
COMPANY, a Corporation,
Cross-libelant.

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Cross-respondent.

SOUTHERN PACIFIC COMPANY, a Corporation,
Libelant,

vs.

The Barkentine "FULLERTON," etc.,
Respondent.

MISSION TRANSPORTATION AND REFINING
COMPANY, a Corporation,
Claimant.

**Notice of Mission Transportation & Refining Co. of
Appeal from Decree Dismissing Cross-libel.**

To the Clerk of the Above-entitled Court, and to the
Libelant and Cross-respondent herein, and to
Messrs. Andros & Hengstler and J. E. Foulds,
Its Proctors.

You and each of you will hereby please take notice
that the Mission Transportation and Refining Com-
pany, a [150] corporation, claimant and cross-li-
belant, herein, hereby appeals from the final decree
made and entered herein on the first day of Febru-
ary, 1913, dismissing the cross-libel on file herein, to

the next United States Circuit Court of Appeals for the Ninth Circuit, to be holden in and for said Circuit at the City and County of San Francisco.

Dated February 3, 1913.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Respondent and Cross-libelant.

Service of the within Notice of Appeal and receipt of a copy is hereby admitted this 10th day of February, 1913.

ANDROS & HENGSTLER,
Proctors for X-Respondent.

[Endorsed]: Filed Feb. 10, 1913. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [151]

*In the United States District Court for the Northern
District of California, First Division.*

IN ADMIRALTY.

MISSION TRANSPORTATION AND REFINING
COMPANY, a Corporation,
Cross-libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Cross-respondent.

**Assignment of Errors of Mission Transportation
and Refining Co.**

The cross-libelant, Mission Transportation and Refining Company, a corporation, hereby assigns errors in the proceedings of the District Court, as follows:

1. That the District Court erred in holding that cross-libelant was not entitled to recover from cross-respondent the damages received by its barkentine "Fullerton," as alleged and prayed for in its cross-libel.

2. That the District Court erred in entering its decree, ordering, adjudging and decreeing that cross-libelant take nothing, and in dismissing its cross-libel. [152]

3. That the District Court erred in holding that the collision between cross-libelant's barkentine "Fullerton" and cross-respondent's steamer "Transit" was due to an inevitable accident.

4. That the District Court erred in holding that the collision between cross-libelant's barkentine "Fullerton" and cross-respondent's steamer "Transit" was due to an inscrutable fault.

5. That the District Court erred in not holding that cross-respondent had not overcome the presumption of fault resting upon its steamer "Transit," as the moving vessel, for the damages inflicted upon cross-libelant's barkentine "Fullerton," the anchored vessel.

6. That the District Court erred in not holding that cross-respondent's steamer "Transit" was in fault, as a moving vessel, for colliding with cross-libelant's barkentine "Fullerton," as an anchored vessel.

7. That the District Court erred in not holding that cross-respondent's steamer "Transit" was in fault in proceeding at an excessive rate of speed in the fog.

8. That the District Court erred in not holding that cross-respondent's steamer "Transit" was in fault for not obeying the second paragraph of Rule 16 of the Inland Rules of Navigation, in that said steamer did not stop its engine when first hearing, forward of her beam, the fog signal of cross-libelant's [153] barkentine "Fullerton," and in not then navigating with caution until the danger of collision was over.

9. The District Court erred in not holding that cross-respondent's steamer "Transit" was in fault for not stopping and backing when said steamer first came into view of cross-libelant's barkentine "Fullerton."

10. That the District Court erred in not holding cross-respondent's steamer "Transit" in fault for proceeding at full speed after said steamer came into view of cross-libelant's barkentine "Fullerton."

11. That the District Court erred in not holding that cross-respondent's steamer "Transit" was unskillfully and negligently and carelessly navigated, in that she proceeded through a dense fog without having a navigating officer outside of the pilot-house on the upper deck or bridge of said steamer.

12. That the District Court erred in not holding that cross-respondent's steamer "Transit" was unskillfully and carelessly and negligently navigated, in that her master instead of performing the duties, and maintaining the watch, properly required of the master of a steamer navigating in a fog, was acting as quartermaster and had his attention fixed

upon the compass in the pilot-house.

Dated: San Francisco, March 8, 1913.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Cross-libelant. [154]

[Endorsed]: Filed Mar. 10, 1913. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [155]

*In the United States District Court for the Northern
District of California, First Division.*

IN ADMIRALTY—No. 15,070.

MISSION TRANSPORTATION AND REFINING
COMPANY, a Corporation,

Cross-libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Cross-respondent.

**Undertaking on Appeal [of Mission Transportation
and Refining Co.].**

WHEREAS, the cross-libelant in the above-entitled action has appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from a final decree rendered and entered against it on the first day of February, 1913, in said action, dismissing the cross-libel of Mission Transportation and Refining Company, a Corporation,—

NOW, THEREFORE, in consideration of the premises and of such appeal, the National Surety Company, a corporation, duly incorporated under the laws of the State of New York, for the purpose

of making, guaranteeing and becoming surety on bonds and undertakings, and having complied with all the requirements of the laws of the State of California, respecting such corporations, does hereby undertake and promise on the part of the appellant that the said appellant will pay all costs which may be awarded against it on this appeal [156] or on a dismissal thereof not exceeding the sum of Two Hundred and Fifty (250) Dollars, to which amount it acknowledges itself bound.

IN WITNESS WHEREOF, the said National Surety Company, a corporation, has caused this obligation to be signed by its duly authorized attorney in fact, and its corporate seal to be hereunto affixed in the City and County of San Francisco, Northern District of California, this 20th day of February, 1913.

NATIONAL SURETY COMPANY,

By FRANK L. GILBERT, [Seal]

Attorney in Fact. .

We hereby accept the above bond.

LOUIS T. HENGSTLER,

Proctor for Cross-respondent.

The above bond is hereby approved.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Feb. 20, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [157]

*In the United States District Court for the Northern
District of California, First Division.*

IN ADMIRALTY—No. 15,070.

SOUTHERN PACIFIC COMPANY,

Libelant,

vs.

Barkentine "FULLERTON,"

Respondent.

MISSION TRANSPORTATION AND REFINING
COMPANY, a Corporation,

Claimant and Cross-libelant.

Stipulation (and Order Re Exhibits).

It is hereby stipulated and agreed by and between the parties hereto that all the exhibits introduced in the above-entitled cause, and in the depositions taken before the Commissioner, be sent up to the United States Circuit Court of Appeals for the Ninth Circuit as original exhibits with the apostles on appeal.

Dated March 12, 1913.

E. J. FOULDS,

LOUIS T. HENGSTLER,

Proctors for Libelant.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Cross-libelant.

It is so ordered.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Apr. 1, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [158]

Certificate of Clerk U. S. District Court to Apostles.

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, hereby certify the foregoing and hereunto annexed one hundred and fifty-eight pages, numbered from 1 to 158, inclusive, with the accompanying exhibits, 8 in number (transmitted under separate cover as per stipulation of parties and order of said Court, copy of which is contained herein), contain a full, true and correct Transcript of the Records, as the same now appear on file and of record in the said District Court, in the cause entitled Southern Pacific Company, a corporation, vs. Barkentine "Fullerton," her tackle, apparel and furniture, etc., and numbered 15,070, and which said Transcript of Appeal is made up pursuant to, and in accordance with "Praeceptum" (copy of which is embodied in said Transcript), and the instructions of Messrs. Ira A. Campbell, McCutchen, Olney and Willard, proctors for appellants herein.

I further certify that the costs of preparing and certifying to the foregoing Transcript of Appeal is the sum of Eighty-eight Dollars and Sixty cents (\$88.60), and that the same has been paid to me by proctors for appellants herein.

In witness whereof, I have hereunto set my hand

and the seal of said District Court this 1st day of April, A. D. 1913.

[Seal]

W. B. MALING,
Clerk.

By Lyle S. Morris,
Deputy Clerk. [159]

[Endorsed]: No. 2262. United States Circuit Court of Appeals for the Ninth Circuit. Mission Transportation and Refining Company, a Corporation, Claimant of the Barkentine "Fullerton," etc., Appellant, vs. Southern Pacific Company, a Corporation, Appellee. Apostles. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Filed April 1, 1913.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the District Court of the United States, in and
for the Northern District of California.*

No. 15,070.

SOUTHERN PACIFIC COMPANY, a Corporation,
Libellant,

vs.

Barkentine "FULLERTON," Her Tackle, Apparel
and Furniture,

Respondent.

**Order Extending Time [to March 15, 1913, in Which
to File Apostles on Appeal].**

Good cause appearing therefor, it is hereby ordered that the Clerk of the above-entitled Court have to and including the 15th day of March, 1913, in which to prepare the Apostles on Appeal herein.

WM. C. VAN FLEET,

Judge.

Dated San Francisco, Cal., March 12th, 1913.

[Endorsed]: No. 15,070. U. S. District Court, Northern District of California. Southern Pac. Co. vs. Mission Transportation Co. Filed Mar. 12, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

No. 2262. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Mar. 15, 1913, to File Record Thereof and to Docket Case. Filed Mar. 12, 1913. F. D. Monckton, Clerk.

*In the Circuit Court of Appeals of the United States
for the Ninth Circuit.*

SOUTHERN PACIFIC COMPANY, a Corporation,
Appellee and Cross-appellant,

vs.

Barkentine "FULLERTON," Her Tackle, Apparel
and Furniture,

Appellant and Cross-appellee.

**Order Extending Time [to April 1, 1913] to File
Transcript of Appeal.**

Upon request of proctors for the respective par-

ties herein, that further time is desired in which to perfect the Transcript of Appeal taken in the above-entitled cause,—

It is hereby ordered that said parties have further time, to wit, to and including April 1st, 1913, in which to file in the Circuit Court of Appeals of the United States for the Ninth Circuit the said Transcript of Appeal.

Dated March 15th, 1913.

WM. C. VAN FLEET,

Judge.

[Endorsed]: No. 2262. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Apr. 1, 1913, to File Record Thereof and to Docket Case. Filed Mar. 17, 1913. F. D. Monckton, Clerk.

No. 2262. United States Circuit Court of Appeals for the Ninth Circuit. Two Orders Under Rule 16 Enlarging Time to and Including Apr. 1, 1913, to File Record Thereof and to Docket Case. Refiled Apr. 1, 1913. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

No. 2262.

MISSION TRANSPORTATION AND REFINING
COMPANY, a Corporation,

Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Appellee.

**Notice of Mission Transportation and Refining Co.
of Filing of Apostles on Appeal.**

To the Southern Pacific Company, Appellee Herein,
and to J. E. Foulds, Esq., and L. T. Hengstler,
Esq., Proctors for Appellee:

You, and each of you, will please hereby take notice that the apostles on appeal in the above-entitled cause were on the 1st day of April, 1913, filed with the clerk of the above-entitled court.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Appellant.

Dated April —, 1913.

[Endorsed]: No. 2262. U. S. Circuit Court of Appeals for the Ninth Circuit. Mission Transportation and Refining Company, a Corporation, Appellant, vs. Southern Pacific Company, a Corporation, Appellee. Notice of Filing of Apostles on Appeal. Filed Apr. 8, 1913. F. D. Monckton, Clerk.

Receipt of a copy of the *with* notice of filing of apostles on appeal is hereby admitted this 8th day of April, 1913.

J. E. FOULDS,

LOUIS T. HENGSTLER,

Proctors for Appellees.

Certificate as to Exhibits.

I, W. B. Maling, Clerk of the District Court of the United States, Northern District of California, hereby certify that the hereunto attached documents, eight (8) in number, known as and marked:

Libelant's Exhibit 1 (pencil diagram);

Claimant's Exhibit 1 (Chart—San Francisco entrance);

Claimant's Exhibit 2 (Map showing forbidden anchorage);

Claimant's Exhibit 3 (pencil diagram);

Claimant's Exhibit 4 (pencil diagram);

Claimant's Exhibit 5 (pencil diagram);

Claimant's Exhibit 6 (pencil diagram);

Claimant's Exhibit 7 (pencil diagram);

are original exhibits introduced and filed at the hearing of the cause entitled *Southern Pacific Company, a corporation, Libelant, vs. Barkentine "Fullerton," Her Tackle, Apparel and Furniture, etc., Defendant*, No. 15,070, as the same now appear on file and of record in this office.

WITNESS my hand and official seal of said District Court at San Francisco, in said District, this 1st day of April, A. D. 1913.

[Seal]

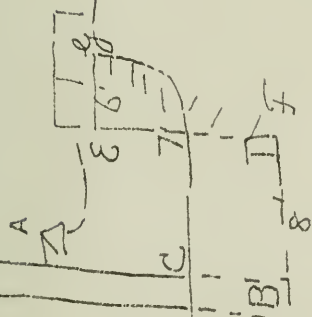
W. B. MALING,

Clerk.

By Lyle S. Morris,

Deputy Clerk.

Libr Ex 1.
 15070 SPC vs Fullerton
 Filed Jan 29/13
 Francis Hull



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CASE No. 2262
 U. S. CIRCUIT COURT OF APPEALS
 FOR THE NINTH CIRCUIT
 LIBELANTS EXHIBIT 1.
 Received APR. 1. 1913.
 F.D. MONCKTON, Clerk.

Francis Truly

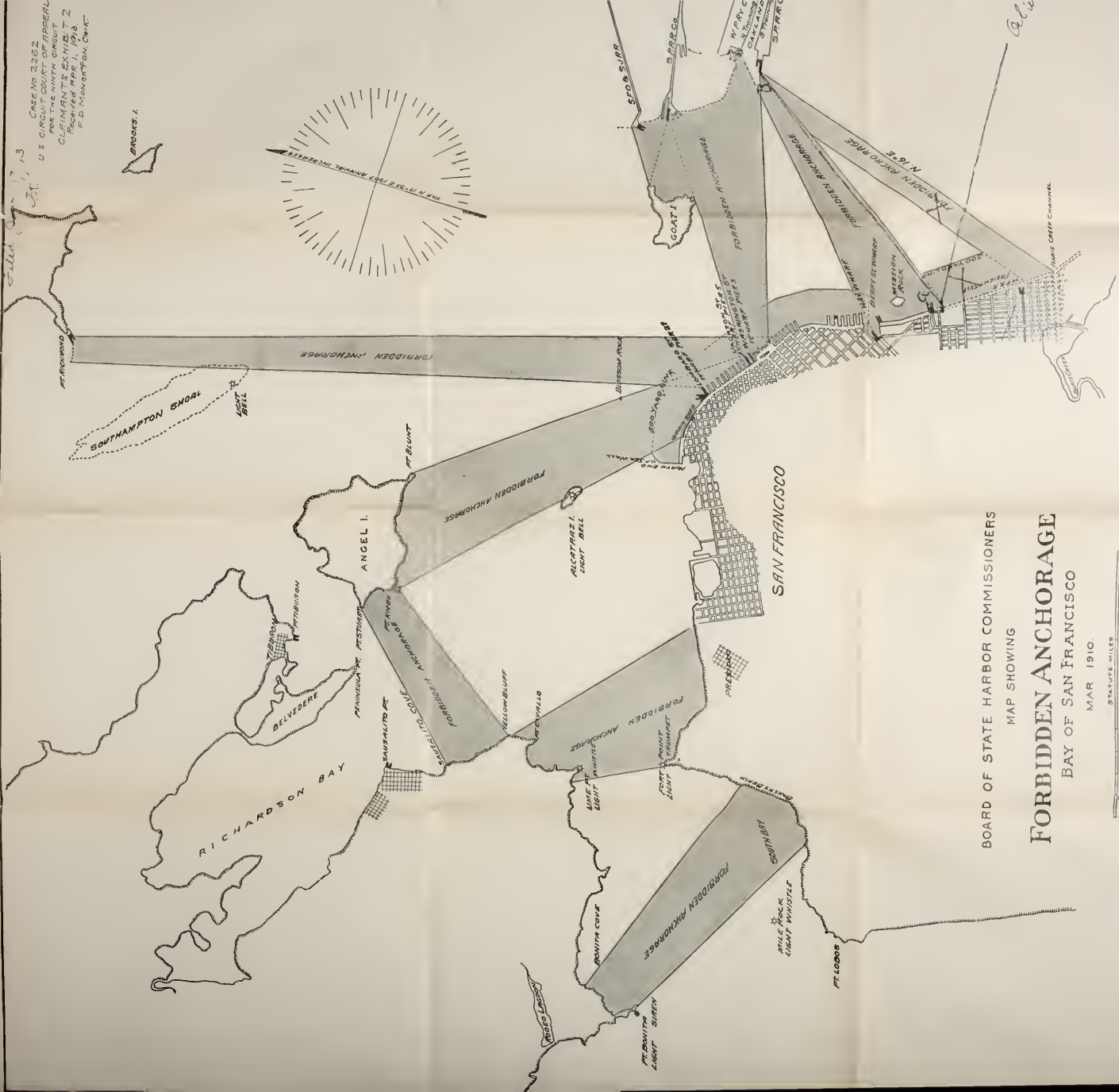


Published at Washington D.
March 1911
BY THE GOAST AND QUANTIC SURVEY

<i>Trematocryptus</i>	L-2	n	P ₈₀
<i>Tropomyrmex</i>	P ₈₂	n	P ₉₀
<i>M. ahngerianus</i>	P ₈₇	n	P ₉₀
<i>Paratrechina obscura</i>	P ₈₆	n	P ₉₀



BROOKS I.



BOARD OF STATE HARBOR COMMISSIONERS

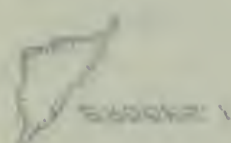
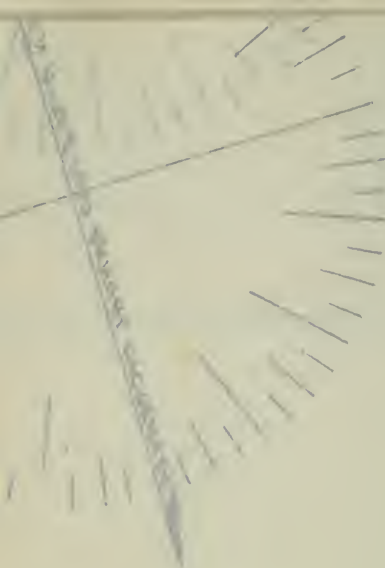
MAP SHOWING

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BAY OF SAN FRANCISCO

MAR 1910



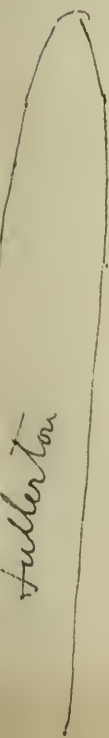
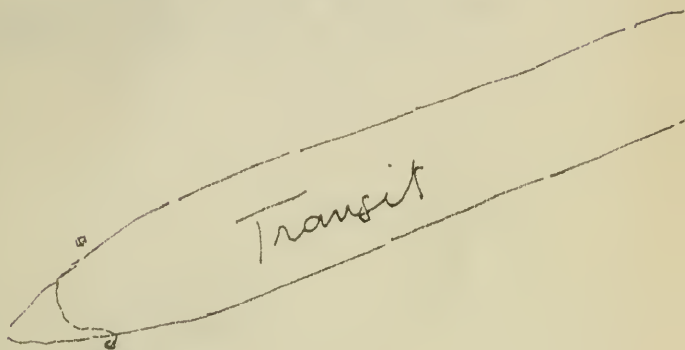


555 W. 1st St.
St. Paul, Minn.
Aug 10, 1903
To the Hon. Sec. of the Interior
Washington, D. C.

#15070 S. P. Co. vs The "Fullerton" ac
Clinto Ex #3
Filed Jan 17/10
Hull, D.C.

185

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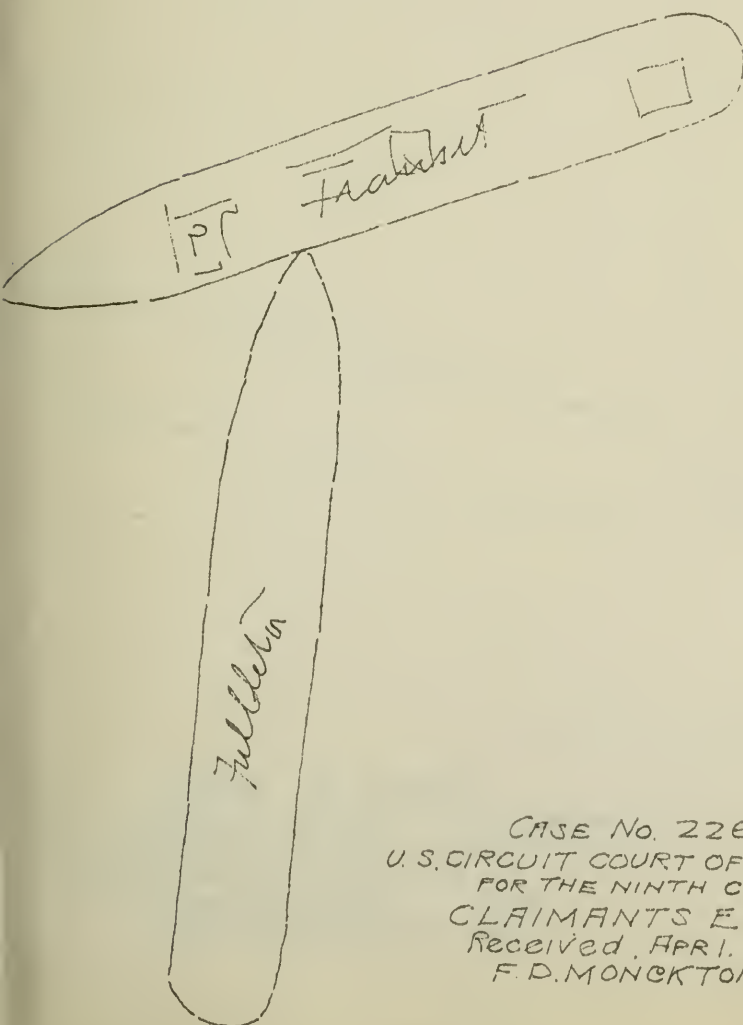


CASE No. 2262.
U. S. CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
CLAIMANTS EXHIBIT 3.
Received APR. 1. 1913.
F. D. MONCKTON, Clerk.

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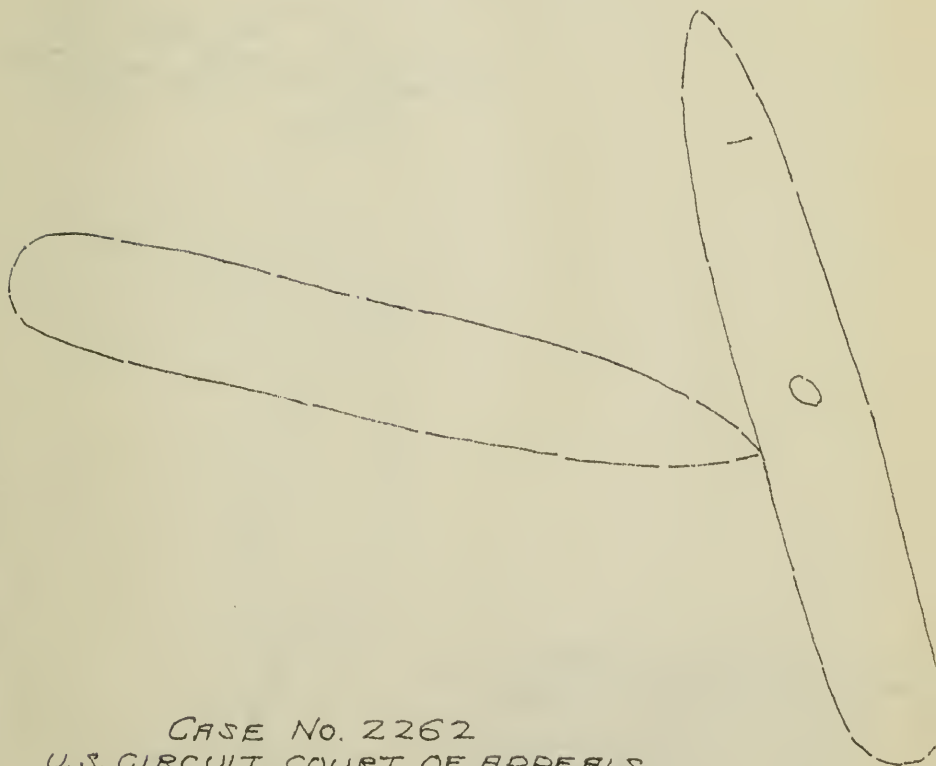


Conty E 4
 #15070 P. Co vs Fullerton
 Filed Jan 17/13
 Thrull, L. J.



CASE No. 2262.
 U. S. CIRCUIT COURT OF APPEAL
 FOR THE NINTH CIRCUIT
 CLAIMANTS EXHIBIT -
 Received, APR. 1. 1913
 F. D. MONCKTON, Clerk.

Claimants Ex # 5
 #15070 L.P. Co. vs Fullerton
 Filed Jan 17/13
 Grull H. F.



CASE No. 2262
 U.S. CIRCUIT COURT OF APPEALS
 FOR THE NINTH CIRCUIT
 CLAIMANTS EXHIBIT 5
 Received APR. 1. 1913.
 F.D. MONCKTON, Clerk.

Fullerton

#15070 SPC.
Fullerton

Clinto Ex # 6.
Filed Jan 17/13
Francis Hull
D.C.

Monckton

CASE No. 2262.
U. S. CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
CLAIMANTS EXHIBIT 6
Received APR. 1. 1913
F.D. MONCKTON, Clerk.

#15070 Sp Co vs ^{Ph} Fullerton

Conto Ex # 7

Filed Jan 17/13
Francis Knell

D.C.

Fullerton

CASE No. 2262

U.S. CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAIMANTS EXHIBIT 7.

Received APR. 1. 1913

F.D. MONCKTON, Clerk.

Francis

United States
Circuit Court of Appeals
For the Ninth Circuit.

SOUTHERN PACIFIC COMPANY, a Corporation,
Cross-Appellant,

vs.

MISSION TRANSPORTATION AND REFINING COM-
PANY, a Corporation, Claimant of the Barkentine
"FULLERTON", etc.,
Cross-Appellee.

Apostles on Cross-Appeal.

Upon Appeal from the United States District Court for the
Northern District of California, First Division.

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California, First Division.

Clerk's Office.

No. 15,070.

SOUTHERN PACIFIC COMPANY, a Corporation,
Libelant,

vs.

The Barkentine "FULLERTON," etc.,
Respondent.

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,
Claimant.

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,
Cross-libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Cross-respondent.

Praeipie [for Apostles on Cross-appeal].

To the Clerk of said Court:

Sir: You will please take notice that the apostles on appeal requested to be prepared in the praeipie of the proctors for cross-libelant in the above-entitled cause will constitute in part the apostles on appeal of libelant, Southern Pacific Company, a corporation, and you are directed to prepare and

certify, to be filed in the Circuit Court of Appeals, immediately as a part of said apostles on appeal the following papers:

1. Notice of cross-appeal of Southern Pacific Company from decree dismissing libel.
2. Assignment of errors of libelant.
3. Stipulation that record on appeal may constitute record on cross-appeal.

These papers are to be prepared by you and filed in the Circuit Court of Appeals pursuant to the stipulation hereinabove mentioned. [1*]

Dated April 4th, 1913.

ANDROS & HENGSTLER,
LOUIS T. HENGSTLER,
J. E. FOULDS,

Proctors for Southern Pacific Company.

[Endorsed]: Filed Apr. 4, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,070.

SOUTHERN PACIFIC COMPANY, a Corporation,

Libelant,

vs.

The Barkentine "FULLERTON," etc.,

Respondent.

*Page-number appearing at foot of page of original certified Record.

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,
Claimant.

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,
Cross-libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,
Cross-respondent.

**Notice of Cross-appeal of Southern Pacific Company
from Decree Dismissing Libel.**

To the Clerk of the Above-entitled Court, and to
Mission Transportation and Refining Company,
a Corporation, Claimant, Cross-libelant and Ap-
pellant Herein, and to Messrs. Ira A. Campbell
and McCutchen, Olney & Willard, Its Proctors:

You, and each of you, will hereby please take notice
that the Southern Pacific Company, a corporation,
libelant and cross-respondent herein, hereby appeals
from the final decree made and entered herein on the
5th day of February, 1913, dismissing the libel on
file herein, to the next United States Circuit Court
[3] of Appeals, for the Ninth Circuit, to be holden
in and for said Circuit at the City and County of
San Francisco.

ANDROS & HENGSTLER,
LOUIS T. HENGSTLER,
J. E. FOULDS,

Proctors for Libelant and Cross-respondent.

Due service and receipt of a copy of the within Notice of Cross-appeal is hereby admitted this 27th day of March, 1913.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant and Cross-libelant.

[Endorsed]: Filed Apr. 4, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [4]

*In the District Court of the United States, in and for
the Northern District of California, First
Division.*

IN ADMIRALTY—No. 15,070.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Libelant,

vs.

The Barkentine "FULLERTON," etc.,

Respondent.

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,

Claimant,

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,

Cross-libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Cross-respondent.

Assignment of Errors.

The libelant, Southern Pacific Company, a corporation, hereby assigns errors in the proceedings of the District Court, as follows:

1. That the District Court erred in holding that libelant, Southern Pacific Company, was not entitled to recover the damages received by its steamer "Transit," as alleged and prayed for in its libel.

2. That the District Court erred in entering its decree, ordering, adjudging and decreeing that libelant, Southern Pacific Company, take nothing, and in dismissing its libel.

3. That the District Court erred in holding that the collision between the barkentine "Fullerton" and libelant's steamer [5] "Transit" was due to an inevitable accident.

4. That the District Court erred in holding that the collision between the barkentine "Fullerton" and libelant's steamer "Transit" was due to an inscrutable fault.

5. That the District Court erred in considering and holding that the testimony in support of libelant's contention that the "Fullerton's" bell was not properly sounded, was negative testimony.

6. That the District Court erred in holding that the testimony in support of libelant's contention that the "Fullerton's" bell was not properly sounded was not sufficient to overcome the statements to the effect that the bell was being rung in the manner required by the Rules.

7. That the District Court erred in not holding

that the testimony in support of libelant's contention that the "Fullerton's" bell was not properly sounded was and is sufficient to overcome the statements of the men on the "Fullerton" to the effect that the bell was being rung in the manner required by the Rules.

8. That the District Court erred in not holding that the barkentine "Fullerton" was solely at fault in colliding with the steamer "Transit," in that the bell on the "Fullerton" was not properly sounded while the "Fullerton" was at anchor in a dense fog.

9. That the District Court erred in not holding that the "Fullerton" was at fault in colliding with the "Transit," in that the "Fullerton" was knowingly lying at an improper anchorage in a dense fog, to wit, in dangerous proximity to the known fairway of the "Transit," required for her passage from the city of Oakland to the city and county of San Francisco.

10. That the District Court erred in not holding that the collision with the "Fullerton" occurred without fault on the part of the "Transit."

Dated San Francisco, Cal., March 27, 1913.

ANDROS & HENGSTLER,
LOUIS T. HENGSTLER,
J. E. FOULDS,

Proctors for Libelant Southern Pacific Company.

[6]

[Endorsed]: Filed Apr. 4, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [7]

*In the District Court of the United States, in and for
the Northern District of California, First
Division.*

IN ADMIRALTY—No. 15,070.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Libelant,

vs.

The Barkentine "FULLERTON," etc.,

Respondent.

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,

Claimant,

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,

Cross-libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Cross-respondent.

Undertaking on Cross-appeal.

WHEREAS, the Libelant, Southern Pacific Com-
pany, a corporation, in the above-entitled action, has
appealed to the United States Circuit Court of Ap-
peals for the Ninth Circuit, from a final decree ren-
dered and entered against it on the 5th day of Feb-
ruary, 1913, in said action, dismissing the libel of
Southern Pacific Company, a corporation.

NOW, THEREFORE, in consideration of the

premises, and of such appeal, National Surety Company, duly incorporated under the laws of the State of New York for the purpose of making, guaranteeing and becoming surety on bonds and undertakings, and having complied with all the requirements [8] of the laws of the State of California respecting such corporations, does hereby undertake and promise on the part of the appellant, that the said appellant will pay all costs which may be awarded against it on this appeal, or on a dismissal thereof, not exceeding the sum of Two Hundred and Fifty Dollars (\$250.00), to which amount it acknowledges itself bound.

IN WITNESS WHEREOF, the said National Surety Company has caused this obligation to be signed by its officers thereunto duly authorized and its corporate seal to be hereunto affixed in the City and County of San Francisco, Northern District of California, this fourth day of April, 1913.

NATIONAL SURETY COMPANY.

[Seal]

By FRANK. L. GILBERT,

Attorney in Fact.

The above bond is hereby approved.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Apr. 4, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [9]

*In the District Court of the United States, in and for
the Northern District of California, First
Division.*

IN ADMIRALTY—No. 15,070.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Libelant,

vs.

The Barkentine "FULLERTON," etc.,

Respondent.

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,

Claimant.

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,

Cross-libelant,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Cross-respondent.

**Stipulation That Record on Appeal may Constitute
Record on Cross-appeal.**

IT IS HEREBY STIPULATED AND AGREED
by and between the parties hereto that the apostles
on appeal, now being prepared at the request of the
proctors for claimant and cross-libelant herein, may
constitute and be considered as the apostles on appeal
of libelant and cross-respondent, Southern Pacific
Company, a corporation, on its cross-appeal herein,

with the exception of the notice of appeal of said libellant and cross-respondent, Southern Pacific Company, and its assignments of error, which shall be added thereunto.

Dated March 27, 1913.

J. E. FOULDS,
ANDROS & HENGSTLER,
LOUIS T. HENGSTLER,

Proctors for Libellant and Cross-respondent.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Cross-libellant. [10]

[Endorsed]: Filed Apr. 4, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [11]

**Certificate of Clerk [U. S. District Court to Apostles
on Cross-appeal].**

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, hereby certify the foregoing and hereunto annexed 11 pages, numbered from 1 to 11, inclusive, contain full, true and correct copies of Praeceptum for Transcript, Notice of Cross-appeal of Southern Pacific Company, Assignment of Errors, Bond on Cross-appeal, and Stipulation as to Record on Appeal, as the same now appear on file and of record in this office in the case of Southern Pacific Company, a corporation, libellant, vs. barkentine "Fullerton," her tackle, apparel and furniture, respondent, No. 15,070.

Said copies are herewith transmitted to the Circuit Court of Appeals of the United States for the

Ninth Circuit, in accordance with the Praeceptum for Transcript embodied herein, and instructions of Messrs. Andros and Hengstler, proctors for the Southern Pacific Company, etc., cross-appellant, herein.

I further certify that the costs of said transcript amount to the sum of \$4.80, and that the same has been paid to me by the proctors for cross-appellants herein.

In witness whereof, I have hereunto set my hand and official seal of said District Court this 12th day of April, 1913.

[Seal]

W. B. MALING,

Clerk.

By Lyle Morris,
Deputy Clerk. [12]

[Endorsed]: No. 2262. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a Corporation, Cross-appellant, vs. Mission Transportation and Refining Company, a Corporation, Claimant of the Barkentine "Fullerton," etc., Cross-appellee. Apostles on Cross-appeal. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Filed April 14, 1913.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. 2262.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Cross-appellant and Appellee,

vs.

MISSION TRANSPORTATION AND REFIN-
ING COMPANY, a Corporation,

Appellant and Cross-appellee.

Notice of Filing of Apostles on Cross-Appeal.

To the Mission Transportation and Refining Com-
pany, Appellant Herein, and to McCutchen,
Olney & Willard and Ira A. Campbell, Esq.,
Proctors for Appellant:

You, and each of you, will please hereby take no-
tice that the apostles on cross-appeal in the above-
entitled cause were on the 14th day of April, 1913,
filed with the clerk of the above-entitled court.

Dated April 15th, 1913.

J. E. FOULDS,

LOUIS T. HENGSTLER,

ANDROS & HENGSTLER,

Proctors for Cross-Appellant.

Due service and receipt of a copy of the within no-
tice of filing of apostles on cross-appeal is hereby ad-
mitted this 15th day of April, 1913.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Appellant and Cross-Appellee.

[Endorsed]: No. 2262. In the United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a Corporation, Cross-appellant and Appellee, vs. Mission Transportation and Refining Co., a Corporation, Appellant and Cross-appellee. Notice of Filing of Apostles on Cross-appeal. Filed Apr. 16, 1913. F. D. Monckton, Clerk.

